

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911

No. 201

FRANK W. BROWN, APPELLANT,

vs.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

FILED FEBRUARY 2, 1910.

(22,003.)

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T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
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1 In the Circuit Court of the United States, in and for the Ninth Judicial Circuit, Northern District of California.

No. 15003.

In the Matter of the Application of

FRANK W. BROWN, for Writs of Habeas Corpus and Certiorari.

Petition for Writs of Habeas Corpus and Certiorari.

To the Honorable Judges of the Circuit Court of the United States for the Ninth Judicial Circuit, Northern District of California:

The petition and Complaint in writing of Frank W. Brown, respectfully shows:

I.

That your petitioner is a citizen of the United States of America, and is a resident of the Northern District of California, and is unlawfully imprisoned and restrained of his liberty by C. T. Elliott, United States Marshal for the Northern District of California, in the City and County of San Francisco, State and Northern District aforesaid. That your petitioner is held by said United States Marshal under color of authority of the laws of the United States by virtue of a warrant of removal claimed to have been issued, under Section 1014 of the Revised Statutes of the United States, dated, November 29th, 1909, signed by Honorable John J. DeHaven, Judge of the District Court of the United States for the said Northern District of California, a copy of which said warrant of removal is hereto annexed, marked Exhibit "A", and made a part of this petition, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any Court.

II.

That the cause or pretense of the imprisonment and detention of your petitioner, according to the best of his knowledge and belief, is that a verified Affidavit of Complaint of one Charles S. Ranger was filed with Honorable E. H. Heacock, United States Commissioner for the Northern District of California, on October 14, 1909, a copy of which said verified affidavit of complaint is annexed hereto, marked, Exhibit "B", and made a part of this petition. That the indictment referred to in said Affidavit of Complaint is a certified copy of an indictment alleged to have been found and returned by the Grand Jury of the United States in the District Court of the United States for the District of Nebraska Omaha Division, and is the same certified copy of indictment thereafter offered in evidence in the proceedings thereafter had in said cause before said Commis-

sioner on November 1st, 1909. That a copy of said alleged certified copy of said indictment is hereto annexed, marked Exhibit "C", and made a part of this petition. That a warrant for the arrest of your petitioner was issued by said United States Commissioner and that subsequent to the issuance of said warrant a temporary mittimus was issued for the detention of your petitioner and that thereafter, and on November 1st, 1909, an alleged commitment of your petitioner was made by said United States Commissioner to await the order of said United States District Judge; that copies of said warrant, temporary mittimus, and commitment, with the returns and endorsements thereon, are hereto annexed, marked respectively Exhibit "D," Exhibit "E," and Exhibit "F," and made a part of this petition.

III.

That your petitioner is named as Frank W. Brown in said indictment and in all of the proceedings had against your petitioner in said cause. That all of the proceedings had against your petitioner before said Commissioner and thereafter before the Honorable John J. DeHaven, Judge of the said United States District Court in and for the said Northern District of California, were and are based upon said indictment, and the proceedings subsequently had thereunder as herein alleged.

IV.

That on the 1st day of November, 1909, the matter of the removal of your petitioner came duly and regularly on for hearing before said United States Commissioner. That a full, true, and correct stenographic report of all of the proceedings then and there had and of all of the evidence then and there taken before said United States Commissioner is hereto annexed, marked, Exhibit "G", and made a part of this petition.

V.

That the certified copy of the indictment offered and introduced in evidence before said United States Commissioner is identical in words and figures with the copy of said indictment hereto annexed and marked, Exhibit "C", as hereinbefore set forth. That a copy of the certified copy of the capias of the said United States District Court for the District of Nebraska, Omaha Division, offered and received in evidence before said United States Commissioner, as aforesaid, is hereto annexed, marked, Exhibit "H", and made a part of this petition.

VI.

That thereafter, to wit, on November 29th, 1909, an application for the removal of this petitioner to the said District of Nebraska, Omaha Division, came on regularly for hearing before Honorable John J. DeHaven, Judge of the District Court of the United States for the said Northern District of California. That no other, or additional evidence was offered or received before said

Honorable John J. DeHaven. That a full true, and correct copy of the minutes of the proceedings then and there had before said Honorable John J. DeHaven, District Judge, as aforesaid, and of the order then and there made, is hereby annexed, marked, Exhibit "I," and made a part of this petition. That thereafter, and on the 29th day of November, 1909, a warrant of removal, signed by said Honorable John J. DeHaven, District Judge as aforesaid, was duly delivered to said C. T. Elliott, United States Marshal as aforesaid, being the same warrant of removal heretofore described, a copy of which is hereto annexed, marked, Exhibit "A", and made a part of this petition, as aforesaid.

VII.

That the imprisonment, detention, confinement, and restraint of your petitioner are illegal, and that the illegality thereof consists in this, to-wit:

1. That the aforesaid arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of the Constitution of the United States and the Amendments thereto, and in particular as follows:

a. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States in this, to wit: the said indictment introduced in evidence, as aforesaid, shows that the District Court of the United States, in and for the Omaha Division, District of Nebraska, State of Nebraska, has no jurisdiction of the alleged offenses, or either of them, set out and alleged in said indictment, because, said indictment does not allege that the conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but alleges, on the contrary, that the conspiracies set forth therein, and each of them, were formed and entered into at a place and district unknown, and because, said indictment does not allege, nor does either of the counts thereof allege, that the first overt acts alleged to have been done pursuant to said conspiracies set forth in said indictment, or either of them, were done and committed in the said District of Nebraska, or said State of Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown.

That therefore the said restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in that this petitioner is entitled to be tried for said alleged offenses, and each of them, in the State and District where said alleged crimes, and each of them, have been committed, which district shall have been previously ascertained by law.

b. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Article V. and

VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: the said indictment 6 and each of the counts thereof did not and do not charge this petitioner with any crime against the United States and show no violation by petitioner of Section 5440 of the Revised Statutes of the United States, or any other statutes of the United States, but show affirmatively that no offense has been committed by petitioner against the laws of the United States.

That therefore, the said restraint of your petitioner deprives him of his liberty without due process of law, and denies to him the enjoyment of the right to be informed of the nature and cause of the accusation.

c. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States in this, to wit: the said indictment, and each of the counts thereof, affirmatively allege and show that the conspiracies set forth therein, and each of them, were formed and entered into more than three years prior to the finding of said indictment, and that the first overt acts committed pursuant to said conspiracies and each of them, were committed more than three years prior to the finding of said indictment; and in this, to wit: said indictment does not allege that this petitioner consciously participated in any overt act done or committed pursuant to said conspiracies, or either of them, within a period of three years next proceeding the finding of said indictment.

That therefore, the restraint of your petitioner deprives him of his liberty without due process of law and in violation of his rights under Sections 1014 and 1044 of the Revised Statutes of the United States.

7 d. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: that the said indictment introduced in evidence as aforesaid, and the evidence introduced before said United States Commissioner, and before said United States District Judge aforesaid, does not show that there is any probable cause for believing this petitioner to have committed the alleged offenses charged in said indictment, or either of them, in said District and State of Nebraska.

That therefore, the said restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States in that your petitioner is deprived of the enjoyment of the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

VIII.

That your petitioner has duly objected to the continuance of any proceedings under the said indictment and warrant before the said United States Commissioner and before said Honorable John J. DeHaven, District Judge as aforesaid on the ground that said Commissioner and said District Judge had and have no authority to proceed therewith on the grounds aforesaid, or any provisions of the Constitution of the United States, or the laws thereof, and that said objections have been overruled.

8 Wherefore, your petitioner prays that a writ of habeas corpus, directed to C. T. Elliott, United States Marshal in and for the Northern District of California, and to any person having your petitioner in custody under the authority of said Marshal commanding them to produce the body of your petitioner before this Court forthwith, together with the cause of such imprisonment and detention, and further that a writ of certiorari issue directed to E. H. Heacock, United States Commissioner for the Northern District of California, and James P. Brown, Clerk of the District Court of the United States in and for the Northern District of California, in aid of the writ of habeas corpus aforesaid, requiring the said E. H. Heacock, United States Commissioner as aforesaid, and James P. Brown, Clerk of the District Court of the United States as aforesaid, to return and certify to this Court forthwith the cause of the imprisonment of your petitioner and true copies of the proceedings, complaint, warrants, depositions, examinations, determinations, commitments, and records had before him, the said E. H. Heacock, or in the possession of him, the said James P. Brown, for such action as may be proper in the premises.

Dated, December 1st, 1909.

FRANK W. BROWN,
Petitioner.

LOUIS ONEAL AND
OWEN D. RICHARDSON,
Attorneys and Counsellors for Petitioner.

9 UNITED STATES OF AMERICA.
Northern District of California, ss:

Frank W. Brown, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is in all respects true.

FRANK W. BROWN.

Subscribed and sworn to before me this 1st day of December, A. D. 1909.

[SEAL.]

J. B. LANKTREE,
*Notary Public in and for the County
of Alameda, State of California.*

UNITED STATES OF AMERICA,

Northern District of California,

City and County of San Francisco, ss:

The President of the United States of America to the Marshal of the United States of America for the Northern District of California, and his Deputies, or any or either of them, Greeting:

It appearing to me that R. B. Herriman, Frank W. Brown, and E. C. Moore, have been committed by E. H. Heacock, United States Commissioner, for the Northern District of California, at San Francisco, for their appearance for trial before the District Court of the United States, for the District of Nebraska, Omaha Division, at Omaha, Nebraska, upon the charge of having on or about the 5th day of April, 1907, in violation of Section 5440, of the Revised Statutes of the United States, at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly conspired, confederated and agreed together and with one Ernest Fenby, and with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled, "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States;

And it further appearing to me that the said R. B. Herriman, Frank W. Brown, and E. C. Moore, are now in the Custody of the Marshal of the United States for the Northern District of California, under and by virtue of said commitment, in default of bail in the sum of Fifteen Hundred (15,000) Dollars, each;

And it further appearing that said R. B. Herriman, Frank W. Brown, and E. C. Moore, were unable to give such bail:

Now therefore you are hereby commanded, to take the bodies of the said R. B. Herriman, Frank W. Brown, and E. C. Moore, and safely deliver them into the Custody of the Marshal of the United States of America, for the District of Nebraska, Omaha, Division, at Omaha, Nebraska, to be then and there dealt with according to law.

And do you then and there deliver to the United States District Court, for the District of Nebraska, Omaha Division, at Omaha, Nebraska, which has, by law, cognizance of the offense, this Writ with your return endorsed thereon, and also make return of a copy of this Writ to the office of the Clerk of this Court.

Further Ordered that execution of this Order of Removal, be, and the same is hereby stayed for a period of three days, from the date thereof.

In testimony whereof, I have hereunto set my hand this 29th day

of November, 1909, and of the Independence of the United States the one hundred and thirty-fourth.

JOHN J. DEHAVEN,
*United States District Judge,
Northern District of California.*

12 UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify, that The Honorable John J. DeHaven, whose name is subscribed to the foregoing Writ, is a Judge of the District Court of the United States of America, for the Northern District of California, duly appointed, and qualified, and that the signature of said Judge to said Writ is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court this 29th day of November, 1909, and of the Independence of the United States the one hundred and thirty-fourth.

[SEAL.]

JAS. P. BROWN.

13 UNITED STATES OF AMERICA,
*Northern District of California,
City and County of San Francisco, ss:*

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify the foregoing to be a true copy of the Warrant of Removal, issued in the case of the United States vs. R. B. Herriman, Frank W. Brown, and E. C. Moore, No. 4730.

Attest my hand and the seal of the said District Court, this 29th day of November, A. D. 1909.

[SEAL.]

JAS. P. BROWN, *Clerk.*
By FRANCIS KRULL,
*Deputy Clerk U. S. District Court,
Northern District of California.*

14 EXHIBIT "B."

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Before me, E. H. Heacock, a United States Commissioner for the Northern District of California, at San Francisco, personally appeared this day, Charles S. Ranger, who being first duly sworn, deposes and says that:

R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin, and 36; and E. C. Moore, first real and true name to deponent unknown,

otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13, in violation of Section 5440 of the Revised Statutes of the United States, at Omaha, Nebraska, in the State and District of Nebraska, and within the jurisdiction of the District Court of the United States in and for the District of Nebraska, Omaha Division, did then and there unlawfully, wilfully, knowingly and corruptly, falsely and wickedly, commit the offense which is particularly and specifically set forth and described in a certain copy of an indictment duly found and returned in the District Court of the United States in and for the District of Nebraska, Omaha Division, a copy of which said indictment is hereto annexed and specifically referred to, and marked "Exhibit A" and made a part of this complaint.

That the persons aforesaid did commit the said offense as aforesaid with the divers other persons who are named and described in the said copy of said indictment, at the time and place, and in the manner and form as specifically described and set forth
 15 in said copy of said indictment hereto attached and marked "Exhibit A."

Against the peace and dignity of the United States of America, and contrary to the form of the Statute of the said United States of America in such case made and provided,

And deponent upon his oath aforesaid, doth further say that an indictment against the said R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; and E. C. Moore, first real and true name to deponent unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13, was duly and regularly returned by the Grand Jury of the United States in the District Court of the United States at Omaha, in the District of Nebraska, on the 7th day of October, 1909, charging the said persons with the crime of conspiracy to commit an offense against the United States in violation of Section 5440 of the Revised Statutes of the United States, and that on said 7th day of October, 1909, a *capias* was regularly issued out of said Court for the arrest of the persons aforesaid.

That the said R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates, and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; and E. C. Moore, first real and true name to deponent unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck, and 13, are now within the State and Northern District of California.

Wherefore, deponent prays that they may be apprehended
 16 and further dealt with according to law.

CHARLES S. RANGER,

Post Office Inspector.

Subscribed and sworn to before me this 14th day of October, 1909.

E. H. HEACOCK,

United States Commissioner as Aforesaid.

UNITED STATES OF AMERICA,

District of Nebraska, Omaha Division, ss:

In the District Court of the United States, in and for the Omaha Division of the District of Nebraska, in the Eighth Judicial Circuit, in the Term Beginning the Twenty-seventh Day of September, in the Year of Our Lord One Thousand Nine Hundred and Nine.

The Grand Jurors of the United States of America, drawn from the territory comprising the Omaha, Norfolk, Chadron, Grand Island, and North Platte Divisions of the District of Nebraska, and sitting in the Omaha Division, being duly empaneled, sworn and charged by said Court to inquire within and for the said Divisions, upon their oaths do present and say that John C. Mabray, otherwise called R. Barrett, Joseph Johnson, J. J. Barrett, A. B. Craft, T. A. Bradley, J. C. Gordon, J. J. Carroll, 66; and B; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin, and 36; R. B. Herriman, first real and true name to the grand jurors unknown, otherwise called George Wilson, George Bennett, James Gates and 12; E. C. Moore, first real and true name to the grand jurors unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13; Frank D. Scott, otherwise called George Wilson, George Maxwell, J. W. Maxwell, Floyd Kelly, W. Gilmore and A; Ed Ellis, first real and true name to the grand jurors unknown, otherwise called

18 Ed. Crawford and D; Willard Bennett, otherwise called W. Hemmingway and 114; Frank M. McCall, otherwise called Monte McCall, F. M. Clark, George Guernsey, George Wilson, George Boyle, George Carter, John Knox; James S. Johnson, otherwise called Jay Lovejoy; Isadore J. Warner, otherwise called Doctor James, Kid Warner and 135; W. H. Barton, first real and true name to the grand jurors unknown, otherwise called 129; B. Beamolt, first real and true name to the grand jurors unknown, otherwise called 69; George A. Bradley, otherwise called Geo. Keller and 15; George H. Bradley; J. H. Beath, first real and true name to the grand jurors unknown, otherwise called 51; John Carkeek, otherwise called Jack Carkeek and 60; Fred Cann, first real and true name to the grand jurors unknown, otherwise called 61; Clarence Class; W. I. Crider, first real and true name to the grand jurors unknown, otherwise called 33; Herbert Coon, otherwise called Brass Kid and 108; J. E. Coon, first real and true name to the grand jurors unknown, otherwise called J. E. Allen and 150; William J. Conners, otherwise called Wm. Carson and W. Richmond; G. H. Verstreten, first real and true name to the grand jurors unknown, otherwise called J. C. Cramer and 2; E. J. Dunn, first real and true name to the grand jurors unknown, otherwise called Ed. J. Davis and 42; Irvie Dunn, otherwise called 14; Tom Davis, first real and true name to the grand jurors unknown, otherwise called 1; John R. Dobbins,

otherwise called Beekie Dobbins; Harry Forbes, otherwise called 50; Clarence Forbes, otherwise called 87; W. S. Gibson, first real and true name to the grand jurors unknown, otherwise called G. W. Garden and 49; R. E. L. Goddard, first real and true name to the grand jurors unknown, otherwise called 58; Tom Gay, first real and true name to the grand jurors unknown, otherwise called 19 Thos. Grant and 100; D. E. Griswold, first real and true name to the grand jurors unknown, otherwise called 156; W. A. Garthie, first real and true name to the grand jurors unknown, otherwise called Al. Barney and 86; H. C. Howard, first real and true name to the grand jurors unknown, otherwise called 64; L. E. Hindman, first real and true name to the grand jurors unknown, otherwise called Honey Grove Kid and 71; Win S. Harris, first real and true name to the grand jurors unknown, otherwise called 22; W. D. Godefroy, first real and true name to the grand jurors unknown, otherwise called 55; Boone B. Jacobs, otherwise called B. B. Davis and 44; Ed. Leach, first real and true name to the grand jurors unknown, otherwise called A. Riley and 18; Leon Lozier, otherwise called D. H. McLeon, Tom Rogers and 21; F. S. Mull, first real and true name to the grand jurors unknown, otherwise called 141; Frank Myers, otherwise called 96; Ed. McCoy, first real and true name to the grand jurors unknown, otherwise called 4; A. V. C. McPherson, first real and true name to the grand jurors unknown, otherwise called 70; Ole Marsh, first real and true name to the grand jurors unknown, otherwise called Joe Carroll and 22; Eddie K. Morris, first real and true name to the grand jurors unknown, otherwise called 11; Barney Martin, otherwise called 147; J. R. Morrison, first real and true name to the grand jurors unknown; Walter Nolon, otherwise called W. S. Thornton, W. H. Martin and 9; C. F. Philpot, first real and true name to the grand jurors unknown, otherwise called 74; P. A. Pulley, first real and true name to the grand jurors unknown, otherwise called 75; Ernest L. Powers, otherwise called E. L. McCabe; Willard Powell; H. K. Robine, otherwise called 20 H. K. Jackson and 148; Tom S. Robinson, first real and true name to the grand jurors unknown, otherwise T. McEnerney, T. Castle and 8; George Ryan, otherwise called 63; John C. Smith; Bert R. Shores, first real and true name to the grand jurors unknown, otherwise called Bert Warner; Young Hackensmith and 48; Louis W. Stowe; William Scott, otherwise called 131; Frank Scott; Charles L. Scott, otherwise called C. L. Seaton and 142; Tom Tyner, first real and true name to the grand jurors unknown, otherwise called 68; J. L. Wright, first real and true name to the grand jurors unknown, otherwise called 113; J. R. Wile, first real and true name to the grand jurors unknown, otherwise called 157; Dick Beatt, first real and true name to the grand jurors unknown, otherwise called Dick Bennett; Ed Leonard, first real and true name to the grand jurors unknown; Joe Acton, first real and true name to the grand jurors unknown; Harry Gorman, otherwise called John Gorman, Harry Price, Harry Wright, and A; John Casey, first real and true name to the grand jurors unknown, otherwise called Billy

Murphy, Billy Casey, H. Wright; Darby, real and true name to the grand jurors unknown, otherwise called John Carter; John Caset, Jack McCormick; Chubb, real and true name to the grand jurors unknown; J. Fite, real and true name to the grand jurors unknown; Tom Rogers, real and true name to the grand jurors unknown, otherwise called Jack Rogers, Tow Wilson, and 10; Jim Griffin, first real and true name to the grand jurors unknown, otherwise called Jim Barry; Johnnie Murphy, real and true name to the grand jurors unknown, otherwise called H. K.; Charles A. Wilhelm, otherwise called Charles Barrett, Johnnie Murphy, Jack Murphy, Tom Murphy and 102; Ben Marks, first real and true name to the grand jurors unknown, otherwise called 76; William Flemming; D. C.

21 Middleton, first real and true name to the grand jurors unknown; Ed. W. Brown, first real and true name to the grand jurors unknown; Marion C. Barnes, alias Bob Barnes; John Deeney, otherwise called Jack Feeney; George Adams; E. J. Dayton, first real and true name to the grand jurors unknown; C. C. Barker, first real and true name to the grand jurors unknown; Dave Finley, otherwise called J. Nelson; Orie Fields, otherwise called Lew Holland and 10; all of the above named persons hereafter in this indictment called conspirators, heretofore, to-wit, on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, did then and there, unlawfully, wilfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with divers other persons to the grand jurors unknown, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an act of Congress enacted March 2, 1889, entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails;" that is to say, the said conspirators did then and there unlawfully, wilfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with said divers other persons to the grand jurors unknown, in devising and intending to devise a scheme and artifice to defraud various persons out of their money and property, to be effected by means of the Post Office establishment of the United States, and particularly to defraud H. J. Hollister, A. A. Van Cleave, Joseph W. Leisen, F. R. Marts, Dr. C. C. Vander Beek, Ed Jones, James Webber, Geo. A. Quinby, C. M. McCain, Max Linderbaum, M. Jackson, J. M. Turner, N. A. Kitchell, Louise Pendell, F. Ellison, Ed. Stenger, W. H. McGrath, Z. Pierpont, John Hermelbrecht, M. Meuer, R. L. King, A. Harrington, C. E. Hayward, Edwin James, F. X. Roethle, Wm. H. Stine, J. C. Bowman, M. S. Mansfield, Joseph P. Walker, R. W. C. Shull, John Corbin, Thomas Gale, George L. Brown, Cecil E. Walker, Adolph Yeske, E. G. Alspaugh, Samuel Sutor, D. C. Harrington, J. E. Harrington, W. H. Bedford, P. W. Whalen, Jas. Servais, Ralph P. Mattingly, Alexander Delain, George F. Castle, Geo. S. Bedford, T. W. Ballew, John Bieger, C. Nelson Pratt, C. A. Nelson, Henry Ruhser, Thos. Agern, John Kozlek, W. B. Woods, H. Ford, O. L.

Cramer, Hans Anderson, R. A. Frazer, J. B. Titterington, A. J. Olson, Frank B. Baker, C. W. Field, Dr. J. C. Parrish, Junior, J. H. Secrest, A. F. Cook, James Tierney, Wm. Burke, Lee J. Schiff, S. McNairn, H. A. Berthold, W. C. Waegner, Jos. A. Young, E. L. Collins, T. E. George, J. E. Cavanaugh, A. S. Johnson, J. W. Springborn, E. S. Bessey, John H. Sizer, Wm. Dwyer, J. P. Schuermann, C. T. Woods, Eugene Schmitt, Henry Stoggsdill, George D. Alberts and A. E. Pierce, hereinafter in this indictment called victims, and divers other persons to the grand jurors unknown, of their money and property by the said conspirators then and there agreeing to organize, institute, conduct, and manage certain horse races and athletic contests including prize fights, wrestling matches and foot races as wagering contests, upon which money should be bet, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis in the State of Missouri, at Little Rock, in the State of Arkansas, at Denver, in the State of Colorado, at New Orleans, in the State of Louisiana, at Seattle, in the State of Washington, and divers other places to the grand jurors unknown, which said races were to be conducted in a fraudulent, unfair and dishonest manner, by some of the said conspirators taking part in said races as jockeys and riding said horses, and other of said conspirators taking part in said athletic contests as prize fighters, wrestlers and foot races, so that said races and athletic contests were to be managed and controlled solely by the said conspirators, so that they

23 themselves should control the result of such contests and render the outcome certain and known in advance to them, and that no one but said conspirators should take part in riding any of the horses in said races or take part as an athlete in any of said athletic contests, for the purpose and with the intent to defraud the said victims and said divers other persons to the grand jurors unknown, out of their money and property; and the said conspirators were further then and there, and at Omaha, District aforesaid, by the following transactions and false and deceitful and fraudulent representations, to execute said ~~unlawful scheme and artifice to defraud and to effect~~ the object of said conspiracy, that is to say, by the said conspirators then and there agreeing to represent to said victims and said divers other persons to the grand jurors unknown, that some of the conspirators were millionaires traveling through the United States making large investments in municipal, state and county and city bonds, interurban railway projects and also timber, coal, mining and oil interests and had with them race horses and jockeys, also athletes to engage in prize fights, wrestling matches and foot races, and that, for their own amusement and recreation, they would match their horses with those of strangers in races, and would also match their athletes in prize fights, wrestling matches and foot races with persons who desired to contest, and that another of the conspirators was a private secretary to the said millionaires and that he had charge of the management of these races and the said athletic contests; that heretofore he had always managed said races and athletic contests to the great financial profit and gain as well as to the amuse-

ment of his employers, the said millionaires, but that he had become aggrieved and offended at the treatment received at the hands of his said employers and therefore would manage certain of these horse races and athletic contests by secret arrangement and deals with the said jockeys and said athletes so that the said

24 millionaires' horses and athletes would be defeated and the said millionaires would lose any money which they might bet or wager on the said races, and athletic contests, and that in these certain races and athletic contests, the said private secretary was desirous of betting against his employers, the said millionaires, and thereby winning their money for himself and for such other persons as would bet for him and as his secret agents; that others of the conspirators were further to represent to said victims and said divers other persons to the grand jurors unknown, that they were friends and relatives of the said private secretary and had been requested by him to assist him in procuring men of financial standing and responsibility to come and act as his secret agents and bet his money for him against the said millionaires on said races and athletic contests; that it was necessary for the said private secretary to procure such persons of financial standing and responsibility to represent him and bet his money for him in order to keep the fact of his disloyalty to his employers secret from them and that such persons would not be required to bet any of their own money, but only such money as should be furnished to them by the said private secretary, and that they should be paid for their services a percentage of the amount won in so betting on said horse races and athletic contests and that if said victims and said divers other persons to the grand jurors unknown would bring letters of credit or negotiable paper for large sums of money and by means thereof would establish a credit at the bank in the town where the said races and athletic contests were to be conducted, then the said private secretary would consider them of satisfactory financial ability and standing to so act for him as his secret agents and bet his money for him as aforesaid; that it was further then and there agreed by the said conspirators that when

25 any of the said victims and said divers other persons to the grand jurors unknown should, relying on said false and fraudulent representations, bet and wager money furnished them by the said private secretary as aforesaid on said races and athletic contests, they should subsequently be informed by the said private secretary or some other one of the conspirators, that part of the money furnished to them by the said private secretary was not in fact the money of the said private secretary, but was the money of his said employers, and that the said millionaires had or might become suspicious that the money so bet was not in fact the money of the said victims, but that there was or might be some collusion between the said victims and the said private secretary, who should act as stakeholder of the money bet on said races and athletic contests, and that to prevent exposure, disgrace and criminal prosecution, and the said races and athletic contests being immediately stopped and called off, it would be necessary for the

said victims and said divers other persons to the grand jurors unknown, to come to the rescue of the said private secretary by obtaining the money for the letters of credit or the negotiable paper they had brought with them and to turn over the large sums of money received therefrom to the said private secretary for his own temporary use, or to bet their said money for him on said races and athletic contests, to allay the suspicions of the said millionaires and insure the said races and athletic contests proceeding to a finish as they had been arranged for, and that the said money would be returned to the said victims and said divers other persons to the grand jurors unknown immediately after said races and athletic contests, on which said money should be bet and wagered as aforesaid, should have taken place; that it was further then and there agreed by the said conspirators that immediately after the said races and athletic contests should have

26 taken place and large sums of money bet and wagered thereon, as aforesaid, by the said victims and the said divers other persons to the grand jurors unknown, with some of the said conspirators, and the money so bet by them, the said victims and the said divers other persons to the grand jurors unknown, should have been won by the said millionaires and conspirators, through and by means of said false and deceitful and fraudulent representations and transactions, and said dishonest, deceitful and fraudulent horse races and athletic contests, that the said conspirators should further, in pursuance of said conspiracy, scheme and artifice to defraud, and to effect the object of said conspiracy, represent to the said victims and said divers other persons to the grand jurors unknown, that the said races and athletic contests had terminated unfortunately through an unusual and deplorable accident, to-wit, a serious injury to one of the jockeys riding the horses in the said races, or one of the athletes engaging in said athletic contests on which the said victims and the said divers others persons to the grand jurors unknown should have bet and wagered large sums of money as aforesaid and entrusted their own money to said private secretary, as aforesaid, or bet the same as aforesaid, and that it would be unfair to declare themselves the winners finally and take the money so bet and put up in the hands of one of the conspirators as stakeholder, and that therefore, under such unfortunate circumstances, they would grant additional races and athletic contests, so controlled and managed as aforesaid, on future dates, when the said victims and said divers other persons to the grand jurors unknown, would be given an opportunity to win back said money otherwise so unfortunately lost as aforesaid, by wagering additional large sums of money and placing the same in the hands of said conspirators; and said conspirators were further to represent to said victims and said divers other persons to the grand

27 jurors unknown, in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, that the said victims and said divers other persons to the grand jurors unknown had been mixed up in a criminal transaction resulting in a serious injury to a person as aforesaid, and that to avoid

arrest and criminal prosecution, public exposure and disgrace, the said victims and said divers other persons to the grand jurors unknown, should depart from the scene of said races and athletic contests, to their homes at once and not disclose to the public any of the aforesaid transactions; that thereupon the said private secretary was to convert the money of the said victims and said divers other persons to the grand jurors unknown, entrusted to him, or bet as aforesaid, to the use and gain of the said conspirators.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said statements and representations to be made by the said conspirators, as aforesaid, to said victims and said divers other persons to the grand jurors unknown, were false, fraudulent and untrue and were to be made for the purpose of and with the intent of deceiving and defrauding the said victims and said divers other persons to the grand jurors unknown, out of their money and property, and to be made in pursuance of said scheme and artifice to defraud and for the purpose of enabling the said private secretary and the said other conspirators to obtain possession of the money and property of the said victims and the said divers other persons to the grand jurors unknown, as aforesaid, and thereupon convert the said money to their own use and gain; all of which the said conspirators then and there well knew and intended.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that the said unlawful conspiracy
28 was one growing out of and based upon the existence of the facts and transactions herein set forth and was to be effected and carried out in the manner and by the means and methods herein described, and the said conspirators were further in executing said scheme and artifice to defraud, and to effect the object of the said conspiracy, to rent a United States post office box for the delivery of mail, in the United States post office at Omaha, in the State of Nebraska, District aforesaid, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis, in the State of Missouri, at Denver, in the State of Colorado, at Little Rock, in the state of Arkansas, at New Orleans, in the State of Louisiana, at Los Angeles, in the State of California, at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown, where any of said conspirators should establish headquarters in furtherance of said scheme and artifice to defraud and to effect the object of said conspiracy, and were to assume and request to be addressed by the number of said post office boxes respectively and carry on their correspondence with each other, through and by means of the post office establishment of the United States by the use, as aforesaid, of such assumed title numbers, without the use of their own proper names; and were further then and there in executing said unlawful scheme and artifice to defraud, through and by means of the post office establishment of the United States, and to effect the object of said conspiracy, to assume names other than their own proper names and request said victims and said divers other persons to the grand jurors unknown, to address letters by such assumed names to be transmitted through and by

means of the post office establishment of the United States to said conspirators; and said conspirators were further, in executing said schemes and artifices to defraud by means of the use and
29 misuse of the said post office establishment of the United States as aforesaid, to take and receive said letters so addressed, from and out of the United States post office at Omaha, in the District of Nebraska, aforesaid, also at Council Bluffs, in the State of Iowa, also at Davenport, in the State of Iowa, also at St. Louis, in the State of Missouri, also at Denver, in the State of Colorado, also at Little Rock, in the State of Arkansas, also at New Orleans, in the State of Louisiana, also at Los Angeles, in the State of California, also at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown; said conspirators were further, in pursuance of said unlawful scheme and artifice to defraud, and to effect the object of said conspiracy, to write and send letters and communications to each other through and by means of the post office establishment of the United States, by depositing and causing said letters to be deposited in the United States post offices at Omaha, in the District aforesaid, and said other post offices, and other post offices to the grand jurors unknown, which said letters were then and there to be of and concerning and in pursuance of the said scheme and artifice to defraud in this: that said letters and communications, so to be written and mailed as aforesaid, were to contain and set forth the aforesaid false, deceitful and fraudulent representations and transactions, or were to be of and concerning said scheme and artifice to defraud, and were to be shown by any of the said conspirators so receiving such letters, as aforesaid, to the said victims and to said divers other persons to the grand jurors unknown, and read by them, with the intent and for the purpose of inducing said victims and said divers other persons to the grand jurors unknown, to rely on said false representations and transactions, and turn over to the said conspirators large sums of money, as aforesaid, to be unlawfully converted by the said conspirators to their own use and gain, as aforesaid; and the said conspirators were then and there further, in
30 pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, to use the post office establishment of the United States by opening correspondence with the said victims and said divers other persons to the grand jurors unknown, and procuring and inciting the said victims and the said divers other persons to the grand jurors unknown, to open correspondence as aforesaid, with Frank Sutor, H. N. Harding and divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice to defraud and to effect the object of the said conspiracy.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that the said wicked and corrupt conspiracy, combination, confederation and agreement was originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and District whereof is to the grand jurors unknown, and until the twenty-third day of Feb-

ruary, in the year nineteen hundred and nine, continuously and at all times during the four years next preceding the said twenty-third day of February, in the year one thousand nine hundred and nine, said wicked and corrupt conspiracy, combination, confederation and agreement was continuously in existence and in the process of execution and operation and including all of said times, and the said conspirators did knowingly, falsely, wickedly, and corruptly conspire, combine, confederate and agree together as aforesaid, and with said Ernest Fenby and said divers other persons to the grand jurors unknown, as aforesaid.

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Overt Acts.

1. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said unlawful conspiracy, combination, confederation and agreement aforesaid, and to effect the object thereof, the said John C. Mabray, under the assumed name of R. Barrett, afterwards, to-wit, on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly rent a United States post office box for the delivery of mail, to-wit, box number 58, in the United States post office at Omaha, in the District aforesaid, and then and there executed a partly written and partly printed application therefor in the words and figures following, to-wit:

Form 1092 $\frac{1}{2}$.*Application for Post Office Box.*

4/5 1907.

The undersigned hereby makes application for the use of a box in the — Post Office, subject to the Postal Rules and Regulations, to all of which he hereby agrees, with the distinct understanding:

1. That the rent of the box herein applied for is to be paid quarterly in advance at rates ordered by the Post Office Department, and that the box shall be closed and may be rented to another applicant if rent remains unpaid ten days after the first day of each quarter.

2. That the box shall not be used for the promotion of any fraudulent purpose nor in pursuance of any illegal business, nor assigned nor transferred to any other person.

3. That the box is to be used only for the reception of the mail matter addressed to the undersigned, or the members of the firm (or corporation) whose names are written below;

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Write here the name of applicant, or when a firm, the names of the members thereof, in full, who are entitled to get their mail in Box No. —.

R. BARRETT.

Signature of Applicant:
R. BARRETT.

Location, ———,
Business, timber.

References:
BILLY NESSELHOUSE,
1409 Douglas.
CHAS. LESIS,
Orpheum Saloon.

Approved:

———,
Postmaster.

Attention is directed to the current edition of the Postal Laws and Regulations and to the Postal Guide for further information relative to boxes and box rent.

5-4250.

2. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement aforesaid, the said R. B. Herriman, first real and true name to the grand jurors unknown, on to-wit, the eighteenth day of June, in the year one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, District aforesaid, a certain letter under the false, fictitious and assumed address and name of "Mr. James Gates Omaha Neb. (Gen. delivery)," a name and address other than his own proper name and address, and he, the said R. B. Herriman, having theretofore requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware,

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, Jan- 15, 1907.

Mr. James Gates, Omaha, Neb.

FRIEND GATES: Enclosed find draft (on Chicago) for \$1000.00 to apply as forfeit money on our deal pending subject to our written conditions in your possession.

Yours truly,

F. R. MARTS."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said R. B. Herriman then and there well knew.

3. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement aforesaid, the said R. B. Herriman, first real and true name to the grand jurors unknown, on to-wit, the eighteenth day of June, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take, and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha,

District aforesaid, a certain letter, under the false, fictitious and assumed address and name of "Mr. James Gates Omaha Neb. (Gen. delivery)," a name and address other than his own proper name and address, and he, the said R. B. Herriman, having theretofore, requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware.

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, Jun- 15, 1907.

Mr. James Gates, Omaha, Neb.

FRIEND GATES: I have sent you a letter about the draft which you can use to show the other parties & in this one wanted to review the situation a little. It seems to me it was a great misfortune that the accident happened to Tom or it would have been all over with & I believe to our entire satisfaction but that can't be helped & as new conditions arise they must be met in some way the best it can since I have come home I find in my financial affairs things have gone worse than I had expected & I am tangled up so it looks as though it would be impossible for me to raise \$3000.00. I have not intimated in any way to my bank anything about our deal. I have done nothing else but work & plan to get together what I can even if I can't get all. If I should never appear there again I would be out the \$1000.00 and my *reputation which is the big part* of course I was not in the beginning to put any of the cash but at a critical point for you & to keep things moving put up what I had. This is an emergency case & maybe we all will need to do some things that under ordinary cases we would not. I have a brother here that could and possibly would help me some if he could know it was safe he knows I was over there to sell tickets on my proposition & that I was planning to attend a match some time now

he is perfectly reliable & the most reticent about telling business affairs of any man I ever knew I would not think of sending him over to look the situation over with a view to helping us without you thought best I wish you would send me Mr. Rileys address please send me copy of forfeit contract at once and I think when you were comparing at the hotel the lists of aunts, put up you had my list if so please send it to me as I want to have it. Tom side was pretty sore when we got to Des Moines but he thought it would be in pretty good shape in a week. Let me hear as to how things are moving.

Yours truly,

F. R. MARTS.

P. S.—Do you think there is any danger of them coaching Murphy any, suppose they would offer him all the forfeit money if he would win what effect would it have on him. If it was practical Tom and I will remember him. If he should go over to them he would ruin his reputation which would be more to him a young man than the entire purse because it would be public news then. do any of those 3 men Hamilton Foster & Gordon make their residence in Omaha and are they with or likely to be with Murphy much in the next few days & before the contest takes place again. do you think Murphy a match for Tom if both done their level best.

MARTS."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said R. B. Herriman then and there well knew.

3. And the grand jurors aforesaid, upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy,

36 combination, confederation and agreement aforesaid, the said

Ed. Leach, first real and true name to the grand jurors unknown, on to-wit, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, District aforesaid, a certain letter under the false, fictitious and assumed address and name of "Mr. A. Riley Arcade Hotel Omaha Neb.," a name and address other than his own proper name and address, and he, the said Ed. Leach, having theretofore requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware.

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, *Jun- 25, 1907.*

Mr. A. Riley, Omaha, Neb.

FRIEND RILEY: Rec your telegram at 6 P. M. this eve am glad to know thinks are all right at your end I have been pushing as hard as I could have 2000.00 together available one man that would help is away in Neb. on a suit looking for him back for the last day or so we think he will be able to fix us up at once if not we are planning to dig it up some where else as soon as I can start will wire you Tom is ready any time I have not heard from Gates.

Yours truly,

F. R. MARTS."

37 That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said Ed. Leach then and there well knew.

5. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement, the said Bert R. Shores, first real and and true name to the grand jurors unknown, on to-wit, the ninth day of September, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly, deposit, and cause to be deposited in the United States Post Office at Omaha, District aforesaid, a certain letter enclosed in an envelope, addressed as follows, to-wit: "Mr. Geo. Alberts Minneapolis Minn. Gen. Del.," which said envelope was then and there postmarked "Omaha, Neb. Sep. 9 2:30 P. M. 1907," and had placed thereon a United States Postage stamp of the denomination of two cents, and wher, said letter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to-wit:

(1)

"The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., *Sept. 8th, 1907.*

DEAR FRIEND GEORGE: I will now tell you of my plan to beat this Club out of a big bunch of money as I told you before my cousin is Mgr. for these people and make all matches. I have won 8 matches before this Club and have never lost a fall to any one. Now these people here think I am invincible and will back me for an awful chunk of money agains- anyone my cousin may match me with they think it will be easy for me to beat Gotch or

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anyone else and have given my cousin authority to match me for \$10,000 against any one Now I know and So dose my

(2)

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

cousin that I stand no show against top notchers but these club members have no more idea about a wrestler than an old woman has, as I said before I have won matches before this club and have never lost a fall but my cousin has never matches me unless he was sure I could win as we have been expecting to get a bunch of money later on its nothing to see \$10,000 or 20, or \$30,000 bet at this club on a Wrestling Match and on one of my matches they bet over \$50,000 now this may sound like big money to you and so it is but even such sums as I have mentioned seem small to these men Now I and my Cousin knows

3.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 19—.

that it will only be a question of time until some wrestler will come along and bet me and then the chance of a life time will be gone So we have decided to get this money ourselves as I told you before and I want you to come down and help us out and if you can get the right kind of a man to help us out I will make you more money on this one play than you ever made before in your life. Now here is our plan and I know it to be a good one I told my cousin all about you Now we want you to get some friend of yours to come down here with you and back you against me. I don't want your friend to furnish

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4.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

or bet a dollar of his own money all we want him to do is to back you with our money and do as we tell him to. Now your friend must be a man that can make a financial showing and make this play look reasonable I will show you why we want this it is merely to make a play look natural and keep the Club members from being suspicious of I and my cousin after it is over with your friend must be closed mouth and not tell this to any one either before or after for this is worth good money to us and we don't want to loose it and if thing is properly handled we may have a chance to get more money later on. Now we want your friend to

5.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

make his financial showing in one of the local Banks here he can make it in any way he sees fit but I think a letter of credit would be the best and the larger the better it will be for us it will make it easier for us to beat these people and we can make those loose more money than we could if they thought you couldnt afford to loose the money. it isnt a question of how — money they will loose but how much we think best to let them loose they are all very wealthy and \$10,000 is no more to one of them than 10- dollars is to you or I. and they wouldnt holler if they lost a 100,000 but of course we want let them loose that much but

40

6.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

we will let them go quite aways about \$60 or \$70,000 I think Now this may sound big but if you will bring the right kind of a man to help us out I will show you that I have set the amount to small instead of to large and I will bet you the best suit of clothes in Omaha that we can win over \$50,000 on the match your friend should be able to make a showing of at least \$10,000 or \$15,000 D. an more if possible Now I and my cousin have figured a long time on this play and I know the way we have planned is the best but of course we can talk it over after you get here and lay our plans accordingly but I am positive by following

7.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

our plans everything will go fine and no one will ever know but what I wasn't beaten on the square of course you understand I and my cousin are working on this deal together my cousin is a fine fellow closed mouthed and will do just as I say now I and my cousin will want 50% of all the winnings and your friend are to have the other 50% that is after we take out \$500 for expences we have been to so far Now don't think we are unreasonable in wanting 500 extra for if you will look at it in the right light you will see we are entitled to it for we lay all plans and furnish all the money We can't use any one

8.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

here to help us out for they might have a friend in the club and they would tell and that would queear all you want to be
41 sure of your friend before you bring him for after the match is over all the money will be turned over to him and he will have in his posetion 80,000 or \$100,000 and may be more and if he wasn't a good honest fellow we might have trouble in getting our share So be sure and bring some one you can trust Now read this letter carefully so you will understand it and explain to your friend that I do not want him to furnish or bet a dollar of his own money now would I let him if he wanted to. But

9.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

he must make the showing in the way I have said and if he can't do that don't bring him *now* matter how good of a fellow he may be for we can't use him and he would be of no use to us what ever for the Showing is what we must have to make the play look natural You see after he has bet 10 or \$15000 dollars that we will give to him we will want him to show his letter of credit and these people can then see he is a man of standing and has money in that way and they will never have any suspicion of anything wrong this is a great play and worth doing

10.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

right we can pull it of in public or private but I think private will be the best as I am sure they will bet more freely in private than in public but we can agree on that after you get here it will only take 3 or 4 days to pull it off after you get here and I want you to come just as soon as possible my cousin is always referee and most always stakeholder so you see we have everything our own
42 way all we want your friend to do is to fix himself so is to make his financial showing in one of the local Banks here as it would look unreasonable

11.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

for him to carry 40 or \$50,000 in currency Remember all we want is the showing in the local Bank here So these people can see that he has money on deposit he can have his banker there fix him with some Bank here Well I have written a long letter and explained as well as I can but can explain much better when you get here this deal will be casie but must look natural you see we will make the match for 10,000 a side and then win the rest in side bets and it will be a ferful chunk Now be sure of your friend and tell him not to tell a soul for some one might have a relative

12.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

of some kind here and write and tip the whole thing off let everything else go and attend to this at once for it's a chance of a lifetime. Wire me C/o this Hotel as soon as you get this and let me know if you can arrange to come at once also wire me the train you leave on and I will meet you at Depot Now be sure and follow the instructions I have give you. Hoping to see you soon

I am your Sincer Friend,

BERT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said Bert R. Shores then and there well knew.

43 6. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement, the said William Scott, on to-wit, the fourteenth day of April, in the year of our Lord one thousand nine hundred and eight, at Homer, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly deposit and cause to be deposited in the United States Post Office at Homer, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope and addressed as follows: "Henry Stogsdill Cabool Mo Texas County", which said envelope was then and there postmarked "Homer Apr 14 1 P M 1908 Nebr", and had placed thereon a United States Postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in words and figures following to-wit:

"APRIL 13-4 1908.

Mr. Henry Stoggill Dear friend will write you as I have just got your letter & I am of the same opinion you have But I am not a guessing I know Bill says that I won't lose a cent & I know I won't. I was with you all the time they said they knew I would not trim you & they played it over my head I have got next to the game and I tell you it is the slickest chance I ever saw & now if you can get a man down there you need not be afraid But what you will get your part if you come write me at Homer Neb & I will meet you in Council Bluffs at the Grand Hotel & have everything in good shape we can pull it off in Omaha. These fellows are just as slick as those others You get a man for all you can as we can make him believe we lost it. Henry if you mean business

we will get more than one I will work with you I think
44 we ought to get our money back & plenty more Direct to Homer Neb & I will meet you in Council Bluffs Iowa at grand Hotel any time you wire me or write me.

WM. SCOTT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, and to effect the object of said conspiracy; all of which the said William Scott then and there well knew.

7. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, the said William Scott, on to-wit, the nineteenth day of May, in the year of our Lord one thousand nine hundred and eight, at Pender, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly deposit, and cause to be deposited, in the United States Post Office at Pender, District aforesaid, for mailing and delivery, a certain letter, enclosed in an envelope, addressed as follows, to-wit: Henry Stoggsdill Cabool Mo Texas County", which said envelope was then and there postmarked "Pender May 19 5 P M 1908 Nebr.", and had placed thereon a United States postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to-wit:

"HOMER NEB 19 1908

Mr Stoggill Dear Sr will answer your letter & let you know that I have everything ready to do the Business we can pull it off in Omaha as there we can get the Bank roll. I will either come down to your place or meet you in K C any time you say We can't do this in K C nor St Louis as the town has to be fixed. Where-
45 ever it is pulled off we will take them for 1600.00 or 2000.00 either one if we can't get more. this is all your friend

WM. SCOTT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said William Scott then and there well knew.

8. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation, and agreement aforesaid, the said Charles L. Scott, on to wit, the fourteenth day of July, in the year of our Lord one thousand nine hundred and eight, at Omaha in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, District aforesaid, a certain letter under the false, fictitious and assumed address and name of "C. L. Seaton Omaha Neb. care of Murray Hotel," a name and address other than his own proper name and address, and he, the said Charles L. Scott having heretofore requested the said Adolf Yeske to so address him and write and mail said letter, and which said letter is in the words and figures following, to wit:

"BILLINGS, MONT., *July 11, 1908.*

C. L. Seaton, Esq.

DEAR SIR: I will call on you at the Murray Hotel about July 20th. I would have called on you before but could — get my business in shape so I could get away. It is very hot now in Montana and if we don't get a good rain soon it will give the dry farming a
46 hard fight.

Yours truly,

ADOLF YESKE,
Warden, Montana."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said C. L. Seaton then and there well knew.

9. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, the said Frank M. McCall, on to-wit, the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eight, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, willfully and knowingly deposit, and cause to be deposited, in the United States Post Office at Omaha, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope, addressed as follows, to-wit: I. J. Warner 2032 Welton St., Denver, Colo., and which said envelope was then and there postmarked "Omaha, Neb. Oct. 25 8:30 A M 1908" and had placed thereon a United States postage stamp of the denomination of two cents, and which said let-

ter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to wit:

"Absolutely Fire Proff.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, Oct. 23rd, '08.

FRIEND KID: Circumstances forced me to either become a partner here or quit. Won't you go into detail by letter. Rice, Ryan
47 and Nolan all here, all wanted in. Enough said, *I'm in.*
Two sales made. Received \$697.50 from one \$566.00 out of other but had to pay \$150.00 out of same. Leaves us the following figures:

697.50
566.00
<hr/>
1,263.50
150.00
<hr/>
2)1,113.50
<hr/>
\$555.70

I will not send you a bit until you write me although no doubt it would be all O. K.

Absolutely Fire Proof.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, —, —, —, —.

I am slightly under the impression it will be unlikely that I will be able to place you here especially at present.

This fellow don't need much more money. Seems to be quite a nice fellow with plenty of good ideas and a worker from wire to wire. The newspaper here at The Bluffs had been bad until yesterday. It is O. K. now.

Jacobs come on through with his party. I interviewed him, and that is the last I have seen or heard of them. Will let you know if they return.

Well old Pard's hustle around when the time comes

Absolutely Fire Proof.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, —, —, —, —.

get a town and an interviewer, and open Denver preferred Davenport second.

There are several reasons why I think we can make more money by operating that way.

Will write more next time. Man come in.
Your friend and Partner,

Mc.
F. M. CLARK,
Above Hotel."

48 That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said Frank M. McCall then and there well knew.

Contrary to the form, force and effect of the Statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

CHARLES A. GOSS,
United States Attorney.

49 *Second Count.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that John C. Mabray, otherwise called R. Barrett, Joseph Johnson, J. J. Barrett, A. B. Graft, T. A. Bradley, J. C. Gordon, J. J. Carroll, 66 and B; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; R. B. Herriman, first real and true name to the grand jurors unknown, otherwise called George Wilson, George Bennett, James Gates, and 12; E. C. Moore, first real and true name to the grand jurors unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck, and 13; Frank O. Scott, otherwise called George Wilson, George Maxwell, J. W. Maxwell, Floyd Kelly, W. Gilmore, and A; Ed Elliss, first real and true name to the grand jurors unknown, otherwise called Ed. Crawford, and D; Willard Bennett, otherwise called W. Hemmingway, and 114; Frank M. McCall, otherwise called Monte McCall, F. M. Clark, George Guernsey, George Wilson, George Boyle, George Carter and John Knox; James S. Johnson, otherwise called Jay Lovejoy; Isadore J. Warner, otherwise called Doctor James, Kid Warner and 135; W. H. Barton, first real and true name to the grand jurors unknown, otherwise called 129; B. Beamolt, first real and true name to the grand jurors unknown, otherwise called 69; George A. Bradley, otherwise called Geo. Keller and 15; George H. Bradley; J. H. Beath, first real and true name to the grand jurors unknown, otherwise called 51; John Carkeek, otherwise called Jack Carkeek and 60; Fred Cann, first real and true name to the grand jurors unknown, otherwise called 61; Clarence Class; W. I. Crider, first real and true name to the grand jurors unknown, otherwise called 33; Herbert Coon, first real and true name to the grand jurors unknown, otherwise called J. E. Allen and 150; William J. Conners, otherwise called Wm. Carson and

50 W. Richmond; G. H. Verstreten, first real and true name to the grand jurors unknown, otherwise called J. C. Cramer and 2; E. J. Dunn, first real and true name to the grand jurors unknown, otherwise called I; John R. Dobbins, otherwise called Beekie Doh-

14; Tom Davis, first real and true name to the grand jurors unknown, otherwise called 1; John R. Dobbins, otherwise called Beckie Dobbins; Harry Forbes, otherwise called 50; Clarence Forbes, otherwise called 87; W. S. Gibson, first real and true name to the grand jurors unknown, otherwise called G. W. Garden and 49; R. E. L. Goddard, first real and true name to the grand jurors unknown, otherwise called 58; Tom Clay, first real and true name to the grand jurors unknown, otherwise called Thos. Grant and 100; D. E. Griswold, first real and true name to the grand jurors unknown, otherwise called 156; W. A. Garthie, first real and true name to the grand jurors unknown, otherwise called Al. Barney and 86; H. C. Howard, first real and true name to the grand jurors unknown, otherwise called 64; L. E. Hindman, first real and true name to the grand jurors unknown, otherwise called Honey Grove Kid and 71; Win S. Harris, first real and true name to the grand jurors unknown, otherwise called 22; W. D. Godefroy, first real and true name to the grand jurors unknown, otherwise called 55; Boone B. Jacobs, otherwise called B. B. Davis and 44; Ed. Leach, first real and true name to the grand jurors unknown, otherwise called A. Riley and 18; Leon Lozie, otherwise called D. H. McLeod, Tom Rogers and 21; F. S. Mull, first real and true name to the grand jurors unknown, otherwise called 141; Frank Myers, otherwise called 96; Ed. McCoy, first real and true name to the grand jurors unknown, otherwise called 4; A. V. C. McPherson, first real and true name to the grand jurors unknown, otherwise called Joe Carroll and 22; Eddie K. Morris, first real and true name to the grand jurors unknown, otherwise called 11;

51 Barney Martin, otherwise called 147; J. R. Morrison, first real and true name to the grand jurors unknown; Walter Nolan, otherwise called W. S. Thornton, W. H. Martin and 9; C. F. Philpot, first real and true name to the grand jurors unknown, otherwise called 74; P. A. Pulley, first real and true name to the grand jurors unknown, otherwise called 75; Ernest L. Powers, otherwise called E. L. McCabe; Willard Powell; H. K. Robine, first real and true name to the grand jurors unknown, otherwise called H. K. Jackson and 148; Tom Robison, first real and true name to the grand jurors unknown, otherwise called T. McEnery, T. Castle and 8; George Ryan, otherwise called 63; John C. Smith; Bert R. Shores, first real and true name to the grand jurors unknown, otherwise called Bert Warner, Young Hackensmith and 48; Louis W. Stowe; William Scott, otherwise called 131; Frank Scott; Charles L. Scott, otherwise called C. L. Seaton and 142; Tom Tyner, first real and true name to the grand jurors unknown, otherwise called 113; J. R. Wile, first real and true name to the grand jurors unknown, otherwise called 157; Dick Beatt, first real and true name to the grand jurors unknown, otherwise called Dick Bennett; Ed Leonard, first real and true name to the grand jurors unknown; Joe Acton, first real and true name to the grand jurors unknown; Harry Gorman, otherwise called John Gorman, Harry Price, Harry Wright and A; John Casey, first real and true name to the grand jurors unknown, otherwise called Billy Murphy, Billy Casey, H. Wright; Darby, real and true name to the grand jurors unknown, otherwise called John Carter,

John Casey, Jack McCormick, Chubb, real and true name to the grand jurors unknown; J. Fite, real and true name to the grand jurors unknown; Tom Rogers, real and true name to the grand jurors unknown, otherwise called Jack Rogers, Tom Wilson and 10;

52 Jim Griffin, first real and true name to the grand jurors unknown; Hair, real and true name to the grand jurors unknown, otherwise called Jim Barry; Johnnie Murphy, real

and true name to the grand jurors unknown, otherwise called H. K.; Charles A. Wilhelm, otherwise called Charles Barrett; Johnnie Murphy, Jack Murphy, Tom Murphy and 102; Ben Marks, first real and true name to the grand jurors unknown, otherwise called 76; William Flemming; D. C. Middleton, first real and true name to the grand jurors unknown; Ed. W. Brown, first real and true name to the grand jurors unknown; Marion C. Barnes, otherwise called Bob Barnes; John Feeney, otherwise called Jack Fenney, George Adams; E. J. Dayton, first real and true name to the grand jurors unknown; C. C. Barker, first real and true name to the grand jurors unknown; Dave Finley, otherwise called J. Nelson; Orie Fields, otherwise called Lew Hollard and 10; all of the above named persons hereafter in this indictment called conspirators, heretofore, to wit, on the first day of April, in the year of our Lord one thousand nine hundred and seven, did then and there unlawfully, willfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with divers other persons to the grand jurors unknown, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress enacted March 2, 1889, entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails"; that is to say, the said conspirators did then and there unlawfully, willfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby and with said divers other persons to the grand jurors unknown, in devising and intending to devise a scheme and artifice to defraud various

53 persons out of their money and property, to be effected by means of the post office establishment of the United States, and particularly to defraud H. J. Hollister, A. A. Vaneleave, Joseph W. Leisen, F. R. Marts, Dr. C. C. Vanderbeck, Ed. Jones, James Webber, Geo. A. Quinby, C. M. McCain, Max Linderbaum, M. Jackman, J. M. Turner, N. A. Kitchel, Louis Prendell, P. Ellison, Ed. Stenger, W. H. McGrath, Z. Pierpont, John Hermelbrecht, M. Meuer, R. L. King, A. Harrington, C. E. Hayward, Edwin James, F. X. Roethle, Wm. H. Stine, J. C. Bowman, M. S. Mansfield, Joseph P. Walker, R. W. C. Shull, John Corbin, Thomas Cale, George L. Brown, Cecil E. Walker, Adolph Yeske, E. G. Alspaugh, Samuel Sutor, D. C. Harrington, J. E. Harrington, W. H. Bedford, P. W. Whalen, Jas. Servais, Ralph P. Mattingly, Alexander Delain, George F. Castle, Geo. S. Bedford, T. W. Ballew, John Bieger, C. Nelson Pratt, C. A. Nelson, Henry Rushert, Thos. Agern, John Koslek, W. B. Woods, H. Ford, O. E. Cramer, Hans Anderson, R. A. Frazer, J. B. Titterington, A. J. Olson, Frank R. Baker, C. W. Field,

Dr. J. C. Parrish, Junior, H. N. Seecrest, A. F. Cook, James Tierney, Wm. Burke, Lee J. Schiff, S. McNairn, N. A. Berthold, W. C. Waegner, Jos. A. Young, E. L. Collins, T. E. George, J. E. Cavanaugh, A. S. Johnson, J. W. Springborn, E. S. Bessey, John H. Sizer, Wm. Dwyer, J. P. Schuermann, C. T. Woods, Eugene Schmitt, Henry Stoggsdill, George D. Alberts, and A. E. Pierce, hereinafter in this indictment called victims, and divers other persons to the grand jurors unknown, of their money and property, by the said conspirators then and there agreeing to organize, institute, conduct and manage certain horse races and athletic contests, including prize fights, wrestling matches and foot races, as wagering contests upon which money should be bet, at Council Bluffs, in the State of Iowa,

Davenport, in the State of Iowa, Burlington, in the State of Iowa, St. Louis, in the State of Missouri, at Little Rock, in the State of Arkansas, at Denver, in the State of Colorado, at New Orleans, in the State of Louisiana, at Seattle, in the State of Washington, and divers other places to the grand jurors unknown, which said races were to be conducted in a fraudulent, unfair, and dishonest manner, by some of the said conspirators taking part in said athletic contests as prize fighters, wrestlers and foot races, so that said races and athletic contests were to be managed and controlled solely by the said conspirators, so that they themselves should control the result of such contests and render the outcome certain and known in advance to them, and that no one but said conspirators should take part in riding any of the horses in said races or take part as an athlete in any of said athletic contests, for the purpose and with the intent to defraud the said victims and said divers other persons to the grand jurors unknown, out of their money and property; and the said conspirators were further then and there, and at Omaha, District aforesaid, by the following transactions, and deceitful representations to execute said unlawful scheme and artifice to defraud and to effect the object of said conspiracy, that is to say; that said conspirators then and there agreed to represent to said victims and to said divers other persons to the grand jurors unknown, that some of the conspirators were desirous of procuring persons of financial standing and ability to bet and wager the money of said conspirators for them upon said races and athletic contests, and that said conspirators further were desirous of procuring persons to entrust their money to the said conspirators to bet and wager on said races and athletic contests, or to secure persons to be their own money for and on behalf of the said conspirators on said races and athletic contests, for which services said persons were to receive and be paid a certain percentage of the money that should be won on said races and athletic contests.

Whereas, in truth and in fact, the said horse races and athletic contests were false, deceitful and fraudulent and so managed and controlled as aforesaid, for the purpose and with the intent of securing said victims and said divers other persons to the grand jurors unknown, to take part therein, as aforesaid, and thereby enable the said conspirators to obtain the possession of the money and property of the said victims and said divers other persons to

the grand jurors unknown, in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy; all of which the said conspirators then and there well knew.

And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that the said unlawful conspiracy was one growing out of and based upon the existence of the facts and transactions herein set forth and was to be effected and carried out in the manner and by the means and methods herein described, and the said conspirators were further in executing said scheme and artifice to defraud and to effect the object of the said conspiracy, to rent a United States post office box for the delivery of mail, in the United States post office at Omaha, in the State of Nebraska, District aforesaid, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis, in the State of Missouri, at Denver, in the State of Colorado, at Little Rock, in the State of Arkansas, at New Orleans, in the State of Louisiana, at Los Angeles, in the State of California, at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown, where any of said conspirators should establish head-

56 quarters in furtherance of said scheme and artifice to defraud and to effect the object of said conspiracy, and were to assume and request to be addressed by the number of said post office boxes respectively, and carry on their correspondence with each other, through and by means of the post office establishment of the United States, by the use, as aforesaid, of such assumed title numbers, without the use of their own proper names; and were further then and there in executing said unlawful scheme and artifice to defraud, through and by means of the post office establishment of the United States and to effect the object of said conspiracy, to assume names other than their own proper names and request said victims and said divers other persons to the grand jurors unknown, to address letters by such assumed names to be transmitted through and by means of the post office establishment of the United States to said conspirators; and said conspirators were further in executing said scheme and artifice to defraud, by means of the use and misuse of the said post office establishment of the United States as aforesaid, to take and receive said letters so addressed, from and out of the United States post office at Omaha, in the State and District aforesaid, also at Council Bluffs, in the State of Iowa, also at Davenport, in the State of Iowa, also at St. Louis, in the State of Missouri, also at Denver, in the State of Colorado, also at Little Rock, in the State of Arkansas, also at New Orleans, in the State of Louisiana, also at Los Angeles, in the State of California, also at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown; said conspirators were further, in pursuance of said unlawful scheme and artifice to defraud, and to effect the object of said conspiracy, to write and send letters and communications through and by means of the post office estab-

57 lishment of the United States by depositing and causing the said letters to be deposited in the United States post office at Omaha, in the District aforesaid, and said other post offices, and other

post offices to the grand jurors unknown, which said letters were then and there to be of and concerning and in pursuance of the said scheme and artifice to defraud in this: that said letters and communications so to be written and mailed as aforesaid, were to contain and set forth the deceitful and fraudulent representations and transactions, and were to be of and concerning said scheme and artifice to defraud, and were to be shown by any of the said conspirators so receiving such letters, as aforesaid, to the said victims and said divers other persons to the grand jurors unknown, and read by them, with the intent and for the purpose of inducing the said victims and said divers other persons to the grand jurors unknown, to rely on said false representations and transactions, and turn over to the conspirators large sums of money as aforesaid, to be unlawfully converted by the said conspirators to their own use and gain as aforesaid, and that the said conspirators were then and there further, in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, to use the post office establishment of the United States by opening correspondence with the said victims and said divers other persons to the grand jurors unknown, and inciting and procuring the said victims and the said divers other persons to the grand jurors unknown, to open correspondence as aforesaid, with Frank Sutor, H. N. Harding and divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that said wicked and corrupt conspiracy, combination, confederation and agreement was originally
58 formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, (the exact place and district whereof is to the grand jurors unknown, and until the 23rd day of February, 1909, continuously and at all times during the four years next preceeding the said 23rd day of February, 1909, said wicked and corrupt conspiracy, combination, confederation and agreement was continuously in existence and in the process of execution and operation during and including all of said times, and the said conspirators did knowingly, falsely, wickedly, and corruptly conspire, combine, confederate and agree together and with said divers other persons to the grand jurors unknown, as aforesaid.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, aforesaid, the said Frank O. Scott, on to wit, the — day of July (the exact date in July being to the grand jurors unknown, wherefore they omit the same from the indictment), in the year of our Lord one thousand nine hundred and eight, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, willfully and knowingly deposit and cause to be deposited in the United States post office at Omaha, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope, addressed to one Frank Fenby, Shepard,

Michigan, and which said letter, so enclosed and mailed as aforesaid, was of and concerning the aforesaid scheme and artifice to defraud, and to effect the object of said unlawful conspiracy; all of which the said Frank O. Scott then and there well knew. (The exact terms and language of said letter is to the grand jurors unknown, wherefore they omit a copy of the same from this indictment.)

59 Contrary to the form, force and effect of the Statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

CHARLES A. GOSS,
United States Attorney.

60 The following persons were duly called and appeared as witnesses before the grand jury in the within case:

W. H. McGrath,
D. L. Weir,
C. A. Nelson,
John Hermelbrecht,
E. G. Alspaugh,
W. H. Moore,
Charles Carrick,
Lulu Bland,
Stanley W. Ray,
C. J. Cate,
E. D. Sullivan,
E. C. Smith,
Valdemar M. Johnson,
Fred Johnson,
M. P. Parks,
Ed Wickham,
J. K. Cooper,
J. C. Baker,
J. E. Cavanaugh,
J. S. Swenson,
A. A. Van Cleave,
J. H. Secrest,
Z. Pierpont,
George D. Alberts,
Henry Stoggsdill,
Ed Pierce,
Frank Blank,
Dr. Frederick H. Hel-
lingsworth,
F. R. Martin,
Jos. H. Leisen,
Ed Jones,
James Webber,
George A. Quinby,
C. M. McCain,
Max Lindenbaum,
M. Jackman,

Samuel Sutor,
James Tierney,
T. E. George,
T. W. Ballow,
C. E. Hayward,
Edwin James,
F. X. Routhle,
Wm. H. Stine,
J. C. Bowman,
Thomas Cale,
George L. Brown,
Cecil E. Walker,
Adolph Yeske,
J. E. Harrington,
D. C. Harrington,
W. H. Bedford,
P. W. Whalon,
Ralph Mattingly,
George F. Castle,
George S. Bedford,
John Bieger,
C. Nelson Pratt,
Henry Rushert,
Thomas Agern,
John Kezlek,
J. B. Titterington,
A. J. Olson,
U. W. Field,
Dr. C. Parrish, Jr.,
William Burke,
E. L. Collins,
J. A. Barquist,
W. H. Dickerson,
T. H. Irvine,
B. F. Froman,
M. Evenburg,
C. T. Woods,

N. A. Kitchell,
 Louis Pendell,
 Ed Stenger,
 S. T. Miner,
 E. R. Casteel,
 J. G. Kill,
 F. E. Ray,
 John L. Price,
 M. Mauer,
 A. Harrington,

Jere Kimmel,
 Wm. Dwyer,
 J. P. Scheuerman,
 A. E. Pierce,
 John H. Sizer,
 Eugene Schmitt,
 W. J. Springborn,
 S. A. Johnson,
 N. J. Glover,
 Elmer Markley.

Endorsed: Presented in open Court by the Grand Jury and filed Oct. 7, 1909. R. C. Hoyt, Clerk. No. 140 Doc. P. United States District court, District of Nebraska, Omaha Division. United States v. John C. Mabray, et al. Indictment: Conspiracy (sec. 5440 R. S.) to violate a law of the United States (Sec. 5480 R. S., as amended by act of Congress of March 2, 1889.) A True Bill: Franklin F. Haase, Foreman. Chas. A. Goss, U. S. Attorney. S. R. Rush, Spec. Ass't to Att'y Gen. A. W. Lane, Ass't U. S. Attorney. Filed Oct. 7, 1909. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,

District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the United States District Court for the District of Nebraska, do hereby certify the above and foregoing to be a true copy of the indictment and endorsements thereon in case No. 140, Docket P, Criminal, United States of America vs. John C. Mabray et al., as full, true and complete as the original of the same remains on file and of record in this office.

In testimony whereof I have hereunto set my hand and affix the seal of said Court, at Omaha, Nebraska, this 22nd day of October, A. D. 1909.

[CLERK'S SEAL.]

R. C. HOYT,

Clerk of United States District Court,

District of Nebraska.

UNITED STATES OF AMERICA,

District of Nebraska, Omaha Division, ss:

I, Thomas C. Munger, do hereby certify and state that I am one of the Judges of the District Court of the United States, for the District of Nebraska, and that one of the places for holding said Court for said district is at Omaha; I further certify that R. C. Hoyt is clerk of said Court for said entire district; I further certify that the above and foregoing is a true copy of an indictment returned by the grand jury at the present session of Court with the endorsements thereon and is now on file and one of the records of said Court; I further certify that the signature affixed to the foregoing certificate by R. C. Hoyt, is the genuine signature of the said R. C. Hoyt, as Clerk, and that the seal of said Court is affixed to said certificate; I further certify that said certificate is in due form and is in all respects according to law.

Witness my hand at Omaha, Nebraska, this 23rd day of October, A. D. 1909.

THOMAS C. MUNGER,
United States District Judge, District of Nebraska.

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, hereby certify that Thomas C. Munger is one of the Judges of said District of Nebraska, and that the signature affixed to the foregoing certificate is the genuine signature of the said Thomas C. Munger as United States District Judge for the District of Nebraska.

Witness my hand and seal of said Court, at Omaha, Nebraska, this 22nd day of October, 1909.

[CLERK'S SEAL.]

R. C. HOYT, *Clerk.*

63

EXHIBIT "D."

UNITED STATES OF AMERICA,
*Northern District of California,
City and County of San Francisco, ss:*

The President of the United States of America to the Marshal of the United States for the Northern District of California, and to his deputies, or any or either of them, Greeting:

Information on oath having this day been laid before me, by Charles S. Ranger, that the crime of violation of Section 5440 of the Revised Statutes of the United States, as alleged in the certified copy of the "Affidavit of Complaint" hereto prefixed and hereby referred to and made a part hereof, has been committed, and accusing R. B. Herriman, Frank W. Brown and E. C. Moore, as stated in said complaint, thereof, you are therefore commanded, in the name of the President of the United States of America, to arrest the above-named R. B. Herriman, Frank W. Brown and E. C. Moore, and take them before me, or the nearest United States Commissioner, or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, that they may then and there be dealt with according to law, for the said offense.

Given under my hand, at my office, in the City and County of San Francisco, in the District aforesaid, this 14th day of October, A. D. 1909.

[COMMISSIONER'S SEAL.]

E. H. HEACOCK,
*United States Commissioner for the Northern
District of California, at San Francisco.*

64

Marshal's Return.

In obedience to the within Warrant, I have the body-s of R. B. Herriman, Frank W. Brown and E. C. Moore before E. H. Heacock U. S. Commissioner, at San Francisco, this 14th day of October 1909.

C. T. ELLIOTT,

U. S. Marshal,

By T. F. KIERMAN,

Deputy Marshal.

I further return that I served the within warrant by arresting the above named R. B. Herriman, Frank W. Brown and E. C. Moore at San Francisco Cal. this 14th day of October 1909.

C. T. ELLIOTT,

U. S. Marshal,

By T. F. KIERMAN,

Office Deputy Marshal.

Endorsed: Marshal's Docket No. 3935. No. 2198. The United States of America vs. R. B. Herriman et al. Warrant of Arrest. Filed Octo. 14th A. D. 1909. E. H. Heacock, U. S. Commissioner for the Northern District of California, at San Francisco.

65

EXHIBIT "E."

UNITED STATES OF AMERICA,

*State and Northern District of California,**City and County of San Francisco, ss:*

The President of the United States of America to the United States Marshal of the Northern District of California and to the Keeper of the Jail of the County of Alameda, State of California, Greeting:

Whereas, R. B. Herriman, Frank W. Brown and E. C. Moore, have been arrested upon the oath of Charles S. Ranger for having on or about the 5th day of April 1907, at Omaha, in the State of Nebraska, in violation of Section 5440 of the Revised Statutes of the United States, unlawfully, wilfully and corruptly conspired, confederated and agreed together and with Ernest Fenby, and with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States Mails, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States, as fully set out in the copy of indictment attached to the affidavit of complaint and Marked "Exhibit "A," on file in the office of the undersigned United States Commissioner, and which copy of indictment is hereby referred to

and made a part hereof; and have not been examined by me, E. H. Heacock, a United States commissioner for the Northern District of California, at San Francisco, upon the aforesaid charge, and have been required to give bail in the sum of Fifteen Thousand Dollars each for their appearance before me on the 28th day of October, 1909, at 11 o'clock A. M., on said day, which requisition they have failed to comply with:

Now these are therefore, in the name and by the authority aforesaid to command you, the said Marshal, to commit the said R. B. Herriman, Frank W. Brown and E. C. Moore to the custody of the Keeper of said Jail; and to command you, the Keeper of said Jail, to receive the said R. B. Herriman, Frank W. Brown and E. C. Moore prisoners of the United States of America, into your custody, in said jail, and *him* there safely keep until *he* be discharged by due course of law.

In witness whereof I have hereunto set my hand and official Seal at my office in said District, this 14th day of October 1909.

E. H. HEACOCK,

United States Commissioner as Aforesaid.

Marshal's Return.

Received this Mittimus on Oct. 14, 1909 and on the same day I committed said prisoners to the custody of the Jail Keeper named therein.

C. T. ELLIOTT,

United States Marshal.

By T. F. KIERMAN, *Deputy.*

Dated Oct. 14, 1909.

Endorsed: Marshal's Docket No. 3935. No. 2198. Before E. H. Heacock U. S. Commissioner for the Northern District of California, at San Francisco. United States vs. R. B. Herriman, alias —. Temporary Commitment. Filed Oct. 18, 1909. E. H. Heacock, U. S. Commissioner for the Northern District of California, at San Francisco.

67

EXHIBIT "F."

UNITED STATES OF AMERICA.

Northern District of California, ss:

The President of the United States of America to the Marshal of the Northern District of California and to the Keeper of the Jail of Alameda County, in the State of California, Greeting:

Whereas, R. B. Herriman, Frank W. Brown, and E. C. Moore, have been arrested upon the oath of Charles S. Ranger, for having on or about the 5th day of April, 1907, in violation of Section 5440, of the Revised Statutes of the United States, at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly, conspired, confederated and agreed together and with one Ernest Fenby, and

with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled, "An Act to punish dealers and pretended dealers in Counterfeit money and other fraudulent devices for using the United States Mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post office Establishment of the United States; and that in pursuance of such conspiracy and to effect the object thereof one John C. Mabry one of such co-conspirators under the assumed name of R. Barrett, on the 5th day of April, 1907, at Omaha, aforesaid, unlawfully, wilfully, and knowingly rented a United States Post office Box for delivery of mail to wit: Box Number 58, in the United States Post Office at Omaha, aforesaid; all as more fully set out in the 68 copy of indictment attached to the affidavit of complaint and marked "Exhibit A," on file in the office of the Undersigned United States Commissioner, and hereby referred to and made a part hereof;

And after an examination being this day had by me, it appearing to me that said offense had been committed, and probable cause being shown to believe said R. B. Herriman, Frank W. Brown, and E. C. Moore, committed said offense as charged, I have directed that said R. B. Herriman, Frank W. Brown, and E. C. Moore, be held to bail in the sum of \$15,000.00 each, to appear at the first day of the next term of the District Court of the United States for the District of Nebraska, Omaha, Division, at Omaha, Nebraska, and from time to time thereafter to which the case may be continued and they having failed to give the required bail:

Now these are therefore, in the name and by the authority aforesaid, to command you, the said Marshal, to commit the said R. B. Herriman, Frank W. Brown, and E. C. Moore, to the custody of the keeper of said Jail of the County of Alameda, California, and to leave with said Jailer a certified copy of this writ; and to command you, the keeper of said Jail of said County, to receive the said R. B. Herriman, Frank W. Brown, and E. C. Moore, prisoners of the United States of America, into your custody, in said Jail and then and there safely to keep until they be discharged by due course of law.

In witness whereof, I have hereunto set my hand and seal at my office in said District this 1st day of November, A. D., 1909.

[SEAL.]

E. H. HEACOCK,

*United States Commissioner for said Northern
District of California at San Francisco.*

69 I, Jas. P. Brown, Clerk of the District Court of the United States District Court, for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the Final Mittimus, issued by United States Commissioner E. H. Heacock, and filed in this office in the case of the United States of America vs. R. B. Herriman, et al., No. 4730, now remaining on file and of record in this office.

Attest my hand *the* seal of the said District Court this 29th day of November, A. D. 1909.

[SEAL.]

JAS. P. BROWN, *Clerk*,
By FRANCIS KRULL,
Deputy Clerk.

70

Return.

(To be Made on the Original Writ Only.)

Received this Mittimus with the within named Prisoner, on the First day of November, A. D. 1909, and on the same day, I committed the said Prisoner to the custody of the Jail Keeper named in said Mittimus, with whom I left at the same time a certified copy of this Mittimus.

Dated November 1st, 1909.

C. T. ELLIOTT,
United States Marshal, Northern District of California,
By T. F. KIRNAN,
Office Deputy.

Marshal's Docket No. 3935. No. 2198. E. H. Heacock, United States Commissioner *Court*. United States of America, vs. R. B. Herriman, et al. Final Mittimus. Issued ——— —, 19—. Returned and filed ——— —, 19—. ——— —, U. S. Commissioner.

71

Certificate.

(To be Signed on Copies Only.)

I certify the within to be a true copy of the original writ.

U. S. Marshal, District of ———,
By ——— —, *Deputy*.

(Endorsed:) Filed Nov. 29, 1909. Jas. P. Brown, Clerk, by Francis Krull, Deputy Clerk.

Before E. H. Heacock, United States Commissioner.

No. 2198.

UNITED STATES OF AMERICA, Plaintiff,

vs.

R. B. HERRIMAN, Alias GEORGE WILSON; GEORGE BENNETT, JAMES Gates and 12, Frank W. Brown, Otherwise Called F. H. Hamilton; F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36, E. C. Moore, Otherwise Called E. C. Foster; E. C. Gordon, E. C. Halleck and 13, Defendants.

MONDAY, November 1st, 1909.

Appearances:

Benjamin McKinley Esq., Asst. U. S. Attorney for the United States.

Louis Oneal Esq., and O. D. Richardson Esq. for the Defendants.

The COMMISSIONER: Proceed.

Mr. McKINLEY: If your Honor please, in this case we now offer in evidence a duly exemplified copy of an indictment returned by the Grand Jury of the United States in the District Court of the United States for the District of Nebraska, Omaha Division, against these defendants and others. I offer that document in evidence (Handing), it being No. 140 Criminal Docket P.

Mr. RICHARDSON: To which we object on behalf of the defendants and each of them upon the following grounds and each of the following grounds:

1. That said indictment shows on its face that the District Court of the United States in and for the Omaha Division, District of Nebraska, has no jurisdiction of the purported crimes set forth in the two counts of said indictment, or either of them, because, (1) said counts of said indictment do not allege, nor do either of them allege, that the alleged conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but each of said counts affirmatively alleges that said conspiracies, and each of them, were formed and entered into at a place and district unknown; (2) said counts of said indictment do not allege, and neither of them alleges that the first overt acts alleged to have been done pursuant to said conspiracies, and each of them, were done and committed in the said District of Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown.

That, therefore, the admission of said purported copy of said indictment in evidence against these defendants, or either of them, and any commitment of these defendants, or either of them, based

thereon, or based on any count thereof, and any warrant of removal issued thereon, and any removal of these defendants, or either of them, pursuant thereto, and any trial of these defendants, or either of them, upon such indictment, or any count thereof, would be in violation of the rights of the defendants, and each of them, under Clause 3, Section 2 of Article III of the Constitution of the United States, and in violation of the rights of the defendants, and each of them, under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of the rights of these defendants, and each of them, under Article V of the

Articles in Addition to and Amendment of the Constitution
74 of the United States, in this, to-wit, that these defendants are, and each of them is, under and by virtue of the provisions of the Constitution of the United States referred to, entitled to be tried and can only be tried for any alleged offense against the United States in the state and district where the offenses charged in the indictment were committed.

2. That said purported indictment, and each and every count thereof, is defective in substance and does not charge any offense against the United States, in this, to-wit:

A. That the matters contained in the first count of the indictment in manner and form as the same are therein alleged are not sufficient in law.

B. That the matters contained in the second count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

That, therefore, the admission of said exemplified copy of said indictment in evidence would tend to deprive these defendants, and each of them, of their liberty without due process of law and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of Section 1014 of the Revised Statutes of the United States.

3. That said indictment does not, and each and every count thereof, does not, tend to show that there was or is probable cause for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged therein.

That, therefore, the admission of said exemplified copy of said indictment in evidence would tend to deprive these defendants, and

each of them, of their rights under Article VI of the Articles
75 in Addition to and Amendment of the Constitution of the United States.

Therefore, upon all the grounds mentioned, I object to the admission of the exemplified copy of the indictment against these defendants, or any of them, in evidence.

The COMMISSIONER: I will overrule your objection.

Mr. RICHARDSON: We except to your Honor's ruling.

CHARLES S. RANGER, called for the United States, sworn.

Mr. McKINLEY: Q. Mr. Ranger, where do you reside?

A. In Iowa. Crescent, Iowa, is my home.

Q. What official position do you occupy?

A. Post Office inspector.

Q. You are connected with what division?

A. St. Louis.

The COMMISSIONER:

Q. You reside where?

A. Crescent, Iowa, is my home.

Mr. McKINLEY:

Q. Do you know these defendants before the court?

A. Yes.

Mr. ONEAL: May it please the court, that question being a preliminary one, we ask that it be answered yes or no.

Mr. McKINLEY: He has answered it "yes."

Mr. ONEAL: Mr. Reporter, read the question and the answer that he gave.

(The Reporter reads the question and answer.)

Mr. McKINLEY:

Q. When did you see them, Mr. Ranger?

Mr. RICHARDSON: That is objected to as immaterial, irrelevant and incompetent, not tending to prove the identity of these defendants, or either of them.

76 Mr. McKINLEY: You can't prove it all at once.

The COMMISSIONER: The objection is overruled.

Mr. RICHARDSON: We take an exception.

Mr. McKINLEY:

Q. When did you see them?

A. At San Jose, California.

Q. When?

A. September 30th of this year.

Q. What name was given by R. H. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12? What name did he give to you?

Mr. ONEAL: We object to that as immaterial, irrelevant and incompetent, and as assuming that R. H. Herriman gave those names without any proof therefor.

Mr. McKINLEY: I am not assuming anything. I am asking him what name did he give to him.

Mr. ONEAL: It has not been shown he gave any name.

Mr. McKINLEY:

Q. What name, if any, did he give?

Mr. RICHARDSON: We object to that as immaterial, irrelevant and incompetent and not tending to prove the defendants or either of the defendants.

The COMMISSIONER: I will overrule the objection.

Mr. RICHARDSON: Exception.

A. R. H. Herriman is the name.

Mr. McKINLEY:

Q. What name was given, if any, by E. C. Moore, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13?

Mr. RICHARDSON: Same objection.

The COURT: The same ruling, and your exception.

A. E. C. Moore was the name.

Mr. McKINLEY:

Q. What name, if any, was given by the defendant Frank W. Brown, otherwise called George H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36?

77 Mr. RICHARDSON: The same objection.

The COURT: The same ruling, and your exception.

Mr. RICHARDSON: Exception.

A. F. W. Brown.

Mr. McKINLEY:

Q. He gave you the name F. W. Brown?

A. Yes.

Q. Did they subsequently repeat those names at any other time?

A. Yes.

Q. Before whom and where?

A. Why, at the police station in this city.

Q. Were they asked their names at that time,—their true names?

A. Yes.

Q. And they gave the names that you have given?

A. Yes.

Q. Have they given those names on any other occasion that you know of?

A. At the first Commissioner's hearing.

Q. They gave them here before the United States Commissioner upon their first appearance, did they not,—the same names?

A. Yes.

Q. Answered to those names?

Mr. ONEAL: What is the testimony of the witness; we don't want to be confused with the statement of counsel.

Mr. McKINLEY:

Q. Is that so, that they gave those names?

Mr. ONEAL: We ask that no leading questions be asked of the witness.

The COMMISSIONER:

Q. What names were given?

Mr. McKINLEY:

Q. What names did they give, if any, at that time?

A. Which time do you refer to?

Q. The time before the Commissioner?

A. My recollection is the Commissioner called each name, and they in turn, each one, identified himself as his name was called.

Mr. McKINLEY: That is all.

78 Cross-examination.

Mr. ONEAL:

Q. What do you say the proceedings were before the Commissioner, Mr. Ranger, at the first hearing before his Honor Judge Heacock?

A. I have a recollection of Judge Heacock calling each of the men by name and each one of them answered.

Q. Do you recall under what circumstances that was done?

A. Why, I recall that it was in the other room, and he asked if these parties were present and each one answered "here" or something similar.

Q. They did answer "here." Don't you recall that in truth and in fact the defendants and each of the defendants declined to give his name?

A. No, I do not.

Q. Don't you recall that it was announced in open court by myself that the defendants would stand mute as to their true names?

A. It is my remembrance that that was subsequent to their having already answered.

Q. Now you state it was subsequent to their having answered, do you?

A. Your statement that they would stand mute was subsequent to their having already answered as to their names.

Q. Did Herriman say anything?

A. Nothing further that I remember.

Q. Did he say anything at all, Mr. Ranger, as a matter of fact?

A. He answered to his name, yes.

Q. How? Did he say "I am here" or "that is my name" or "R. H. Herriman is my name" or anything of that sort?

A. I don't just remember what the form of his reply was.

Q. Did he make any reply at all, as a matter of fact, Mr. Ranger?

A. Yes.

Q. Well, what was that reply? Give it as nearly as you can?

Q. Why, it was some reply acknowledging that he was the party.

Mr. ONEAL: We ask that that be stricken out as the assumption of the witness.

79

A. I don't remember what his actual words were.

Mr. McKINLEY: Let us have this over and not be technical.

Mr. ONEAL: A man's liberty is at stake here. This is not a technical procedure. We ask that the answer of the witness go out, as to what inference he might have drawn as to anything that was done by any of the defendants.

The COMMISSIONER: Let the witness state what occurred.

Mr. ONEAL:

Q. What was said by Mr. Herriman?

A. I cannot recall the exact words.

Q. What was said—or rather the defendant charged under the name of Herriman—what was said by the defendant charged under the name of Brown?

A. I fail to recall his exact words.

Q. Now, as a matter of fact, don't you know, Mr. Ranger, that none of them said anything?

A. As a matter of fact, it is very clear in my mind that they all answered to their names.

Q. That they answered to their names?

A. Yes.

Q. What did they say in answering to their names?

A. In answer to the judge's question?

Q. Yes, what was said by any one of the defendants?

A. I don't recall the exact words.

Q. Don't you know that in truth and in fact none of them said anything?

A. I have a very clear remembrance that they all answered to their names, as I was particularly interested to see whether they would.

Mr. ONEAL: If your Honor will pardon the question or rather a repetition of the question, your Honor will observe that this witness, for some reason or other, has not thus far given any answer or any purported answer of any one of these defendants—

The COMMISSIONER: Further than to say they answered to their names.

80 Mr. ONEAL: In answering to their names, I would like to know what was said.

The COMMISSIONER: Ask him.

Mr. ONEAL:

Q. What was said?

The COMMISSIONER:

Q. In answering to their names what was said or done.

Mr. McKINLEY: Yes.

Mr. ONEAL: My question was not what was done. It was what was said.

Mr. McKINLEY: It was what was said or done.

The COMMISSIONER: I added that "or done."

Mr. ONEAL: I want to know what was said.

The COMMISSIONER: Ask him your question.

Mr. ONEAL:

Q. What was said?

A. I am unable to state the exact words that each did say.

Q. Did any one of them use any word?

A. I have a very clear recollection that they did.

Q. That they did.

A. Yes.

Q. Is your recollection equally as clear as to what they said or something similar to what they might have said?

A. My recollection is that they all acknowledged in some word their identity, but as to what the exact word was it did not impress my mind strong enough to remember.

Q. Don't you now recall that his Honor, Judge Heacock, asked for the identity of the three defendants and that I announced that at that time they stood mute as to their identity?

A. No, I do not.

Q. That did not transpire then?

A. I remember your remarks to that end, but I have a very clear remembrance,—I think now that your remarks in regard to their standing mute were subsequent to his having called the three names and their having acknowledged their identity.

81 Q. You arrested these three defendants under what names?

A. R. B. Herriman, Frank W. Brown, and E. C. Moore.

Q. You arrested the three defendants under a warrant that I now present to you, did you not?

Mr. McKINLEY: I object to that as immaterial, irrelevant and incompetent under which warrant they arrested them.

The COMMISSIONER: I will overrule the objection.

Mr. McKINLEY: That has not any tendency to prove the identity.

Mr. ONEAL: It would have a tendency to show what transpired at the first hearing.

A. I had a capias.

Q. Where is the capias?

A. That was turned in; that was turned over to the sheriff there, I think, at the time.

Q. And the capias recited what names as being the names of the defendants?

A. R. B. Herriman, F. W. Brown and E. C. Moore.

Q. That was the way the warrants were read to the defendants, were they not?

A. Yes.

Q. The warrant was read to the defendant whom you now designate or attempt to designate as R. B. Herriman—the warrant designating the defendant as R. B. Herriman was read to him?

A. Yes.

The COMMISSIONER: Do you want this marked as an exhibit?

Mr. McKINLEY: It might as well be marked. Before calling this witness I had intended to put something else in the record, but we will now wait until they get through with the witness and then offer it.

Mr. ONEAL: That is all.

Mr. McKINLEY: We will now, before calling the next witness, offer in evidence a capias of the United States District Court for the District of Nebraska, Omaha Division,—a certified copy in each

case of the capias,—against Frank W. Brown, otherwise called 82 F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36. I think that is a sufficient description of it; a certified copy of capias against E. C. Moore, otherwise known as E. C. Foster, E. C. Gordon, E. C. Halleck and 13; and a certified copy of a capias issued out of the same court—these are all out of the same court—against R. B. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12. Attached to the capias in each case is a certified copy of the return of the United States Marshal for the District of Nebraska in each case, certifying and returning the fact that after diligent search he is unable to find each of the parties that I have mentioned within his district. I ask that each of those be also marked.

Mr. RICHARDSON: We object to the admission of these capias and each of them on the grounds heretofore urged in the objection to admission of the exemplified copy of the indictment.

The COMMISSIONER: I will make the same ruling and you can have your exception.

Mr. RICHARDSON: Exception.

JAMES O'CONNELL, called for the United States, sworn.

Mr. McKINLEY:

Q. Mr. O'Connell, you reside in San Francisco?

A. Yes.

Q. What official position do you occupy?

A. Post office Inspector.

Q. You are a Post Office Inspector connected with the office of the Post Office Inspector in charge at San Francisco?

A. Yes.

Q. And you have been such for a number of years past?

A. Yes.

Q. Did you see these defendants or either of them in San Jose, Santa Clara County, this district, at any time during the month of September of this year?

A. Yes.

83 Q. Were you present at the time that they were taken into custody?

A. I was.

Q. What names, if any, did they give to you, or did you ask them their names at that time; let me ask you that.

A. Yes.

Q. You specifically asked them the names of each?

A. Yes.

Q. What name was given by the defendant who is charged as R. B. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12? What did he tell you his name was?

A. The defendant there answered to the name of Herriman; I asked what his name was and he said R. B. Herriman.

Q. What name was given, if any, by the defendant Frank W.

Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36?

A. F. W. Brown.

Q. What name was given at that time and place by the defendant E. C. Moore, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13?

A. E. C. Moore.

Q. I understand you, Mr. O'Connell, each one of those men specifically gave those particular names in answer to questions asked by you as to their identity?

A. Particularly so in the case of Brown and Moore; Herriman came in afterwards and I asked him if his name was R. B. Herriman and he said it was, but the others was in response to my question as to what their name was.

Q. You asked the question of the defendant Herriman in the form in which you have given it?

A. Yes.

Q. He said that was his name?

A. Yes.

Cross-examination.

Mr. ONEAL:

Q. Mr. O'Connell, where did you say this conversation took place?

A. In the House at 246 Park Avenue, San Jose.

Q. And who was present?

A. As to the defendants, Brown and Moore there was a man name- Walter Knox, and there was a woman, and Sheriff 84 Langford of Santa Clara County, and Inspector Allmon, and as to the defendant Herriman those I have named before were present and in addition Mr. Ranger.

Q. What was the first word that was said, the first thing that was said by you to the defendant charged under the name of Herriman?

A. What was the first thing I said to him?

Q. Yes.

A. I don't remember.

Q. Who spoke first, did you or did he?

A. I. He said nothing.

Q. What did you say?

A. I think the first words, I recall, I addressed to him "Is your name Herriman?" and he said yes.

Q. Didn't you say "Hello, Herriman; you are looking fine?"

A. I might have said so.

Q. Don't you know that was what was said?

A. It might have been said, but in addition to that I asked what his name was.

Q. You asked him that in the presence of Sheriff Langford?

A. As near as I can recall. The events were transpiring rather rapidly about that time, and I might be mistaken.

Q. You were all in one room?

A. I might be mistaken as to the woman being present, because she might have been out of the room. I am sure that the men were there.

Q. You are sure that Sheriff Langford was there?

A. Yes; he was there; we took him there.

Q. And in Sheriff Langford's presence you said "what is your name," did you?

Mr. McKINLEY: That is not what he stated.

Mr. ONEAL:

Q. To which he responded "R. B. Herriman?"

A. That is not what I said. I said "Is your name Herriman" and he said "yes."

Q. "Is your name "Herriman" and he said "yes"?"

A. Yes.

Q. You are positive of that?

A. Yes.

Q. There could not be any possibility of a mistake about that?

85 A. No, there could not be.

Mr. ONEAL: That is all.

Mr. McKINLEY: That is all.

Mr. McKINLEY: The matter is submitted on behalf of the Government for the present, having made a prima facie showing.

Mr. ONEAL: At this time, incidentally, we want to call your Honor's attention to the transcript of the proceedings had before your Honor on October 14th, already referred to by the witness Ranger, who seems to be somewhat zealous; the defendants, and each of them, on being asked their true names stood mute. I simply call your Honor's attention to that portion of the record.

(After discussion.)

Mr. RICHARDSON: We will move that this proceeding be dismissed, if the court please, on the ground, first, that there is no competent or sufficient evidence of the identity of these defendants or either of them; secondly, upon the ground that the evidence admitted does not show that the District Court of the United States, in and for the Omaha Division, District of Nebraska, has any jurisdiction of the purported crimes set forth in the two counts of the exemplified copy of the indictment admitted in evidence, or either of them, because (A) said counts of said indictment do not allege, nor does either of them allege, that the alleged conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but each of said counts affirmatively alleges that said conspiracies, and each of them, were formed and entered into at a place and district unknown; (B) that said counts of said exemplified copy of said indictment do not allege, and neither of them alleges, that the first overt acts alleged to have been done pursuant to said conspiracies purported to be set forth therein, and each of them, were done and committed in the said District of

Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown. That, therefore, any order committing these defendants, or either of them, upon the evidence so far adduced in this proceeding, and any warrant of removal issued thereon, and any removal of these defendants, or either of them, pursuant thereto, and any trial of these defendants, or either of them, upon such indictment, or any count thereof, would be in violation of the rights of these defendants, and each of them, under Clause 3, Section 2 of Article III of the Constitution of the United States, and in violation of the rights of the defendants, and each of them, under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of the rights of these defendants, and each of them, under Article V of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to-wit, that these defendants are, and each of them is, under and by virtue of the provisions of the Constitution of the United States referred to, entitled to be tried and can only be tried for any alleged offense against the United States in the state and district where the offenses charged in the indictment were committed.

2. That said purported exemplified copy of said indictment, introduced in evidence, and each and every count thereof, is defective in substance and does not charge any offense against the United States, in this, to-wit:

A. That the matters contained in the first count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

87 B. That the matters contained in the second count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

That, therefore, any commitment based upon the evidence introduced in this proceeding, and upon the exemplified copy of said indictment, tends and will tend to deprive these defendants, and each of them, of their liberty without due process of law and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of Section 1014 of the Revised Statutes of the United States.

3. That the indictment introduced in evidence does not, and each and every count thereof does not, tend to show that there was or is probable cause for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged therein, nor does the evidence introduced at this proceeding tend to show that there was or is probable cause for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged in said indictment.

That, therefore, any commitment of these defendants, or either of them, would and will tend to deprive these defendants, and each of them, of their rights under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States.

Upon all these grounds we move for a dismissal of this proceeding and for the discharge of the defendants.

The COMMISSIONER: I overrule the motion.

Mr. RICHARDSON: Exception.

Mr. ONEAL: We would like to announce at this time that insofar as further proceedings before the Commissioner are concerned, we have no evidence to present on behalf of the defendants.

88 The COMMISSIONER: Is the matter submitted by the defendants?

Mr. McKINLEY: The matter is submitted by the Government.

Mr. ONEAL: The matter is submitted on the part of the defendants.

The COMMISSIONER: I hold the defendants, and each of them, for trial before the District Court of the United States for the District of Nebraska, Omaha Division, and fix the bail of each at \$15,000, and in default of such bail I remand them to the custody of the United States Marshal for this District to await such order in regard to their removal as may be made on application therefor by the United States Attorney to the District Judge of this District.

Mr. RICHARDSON: We except to your Honor's ruling.

89

EXHIBIT "H."

Capias.

UNITED STATES OF AMERICA,

District of Nebraska,

Omaha Division, ss:

The President of the United States of America to the Marshal of the District of Nebraska, Greeting:

You are hereby commanded that you take Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36 (indicted with others, if he shall be found in your District, and him safely keep, so that you may have him bodily in the District Court of the United States of America, for the District of Nebraska, to be held at Omaha, in said District, before the Judge of the said Court, forthwith, to answer unto the United States of America, on an Indictment for Conspiracy, contrary to the laws of the United States.

Hereof fail not, and have you then and there this Writ with your doings thereon.

Witness, The Honorable Thomas C. Munger, Judge of the District Court of the United States, for the District of Nebraska, at Omaha, this 7th day of October, 1909.

[SEAL.]

R. C. HOYT, *Clerk,*

By ———, *Deputy.*

Endorsed: Filed Oct. 8, 1909. R. C. Hoyt, Clerk.

Endorsed on the back: Marshal's No. —, No. 140. *P. United States District Court, District of Nebraska, Omaha Division. United States of America vs. John C. Mabray, Frank W. Brown, et al. Capias. Bond fixed at \$15,000.00. Marshal's Costs, Service \$ —; Mileage —; Expense, (in lieu of mileage) —; Total \$ —.*

90 Attached to the foregoing Capias were two slips, as follows:

1.

UNITED STATES OF AMERICA,

District of Nebraska,

Omaha Division, set:

I, R. C. Hoyt, Clerk of the United States District Court for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original thereof, which original is now in my custody as such Clerk. Said cause is still pending and undetermined in said Court.

Witness my hand as clerk, and the seal of said Court, at Omaha, Nebraska, this 8th day of October, 1909.

[SEAL.]

R. C. HOYT, *Clerk,*

By ———, *Deputy.*

2.

Form No. 465.

DISTRICT OF NEBRASKA, ss:

I hereby certify and return, that on the 8th day of October, 1909, I received the within Capias and that after diligent search, I am unable to find the within named defendants, Frank W. Brown within my district.

WM. P. WARNER,

United States Marshal,

By J. B. NICKERSON,

Deputy United States Marshal.

91 EXHIBIT "I."

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 29th day of November, in the year of our Lord, one thousand nine hundred and nine.

Present:

The Honorable John J. De Haven, Judge.

No. 4730.

UNITED STATES OF AMERICA

vs.

R. B. HERRIMAN, FRANK W. BROWN, and E. C. MOORE.

Now comes the United States Marshal for the Northern District of California, and produced before the Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California, the bodies of R. B. Herriman, Frank W. Brown, and E. C. Moore. And it appearing that the said R. B. Herriman, Frank W. Brown, and E. C. Moore have been duly committed by E. H. Heacock, United States Commissioner for the Northern District of California, in default of bail in the sum of Fifteen Thousand dollars each, for trial before the District Court of the United States for the District of Nebraska, Omaha Division at Omaha, Nebraska, upon the charge of having, on or about the 5th day of April, 1907, in violation of Section 5440 of the Revised Statutes of the United States at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly conspired, confederated and agreed together and with one Ernest Fenby, and with divers other persons,

92 to commit the acts made offenses and crimes by Section 5440 of the Revised Statutes, as amended by an Act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States Mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States:

On motion of Benj. L. McKinley, Ass't U. S. Att'y, and in default of bail in the sum of fifteen thousand dollars each, and after hearing Owen D. Richardson, Esqr., attorney for said defendants, in opposition thereto, it is by the Court ordered that the United States Marshal for the Northern District of California, surrender and deliver the said R. B. Herriman, Frank W. Brown, and E. C. Moore, to the United States Marshal for the District of Nebraska, Omaha Division, at Omaha, Nebraska, to be by him produced before the United States Court as by law has cognizance of the offense, to be taken and dealt with according to law. Further ordered that a warrant of removal in due form issue forthwith. Further ordered that execution of said

warrant of removal be, and the same is hereby stayed for a period of three days from this date.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the above entitled case.

Attest my hand and seal of said District Court this 29th day of Nov. A. D., 1909.

[CLERK.]

JAS. P. BROWN, Clerk,

By FRANCIS KRULL,

Deputy Clerk.

Endorsed: Filed Dec. 1, 1909. Southard Hoffman, Clerk, By W. B. Maling, Deputy Clerk.

93 At a stated term, to wit: the November term A. D. 1909 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court Room in the City and County of San Francisco, on Monday the 6th day of December in the year of our Lord one thousand nine hundred and nine.

Present: The Honorable William C. Van Fleet, District Judge.

No. 15003.

In the Matter of the Application of FRANK W. BROWN for the Writ of Habeas Corpus.

Order Denying and Dismissing Petition.

Petitioner's application for the writs of habeas corpus and certiorari heretofore submitted being now fully considered, and the Court having rendered its oral opinion, it was ordered, in accordance therewith, that said application be and the same is hereby denied and that said petition be and the same is hereby dismissed.

94 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Notice of Appeal.

To the Appellees Above Named:

Please take notice that Frank W. Brown the petitioner above named, hereby appeals to the Supreme Court of the United States

from final order made and entered on the 6th day of December, 1909, by the Honorable W. C. Van Fleet, District Judge presiding in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, denying his application for writs of habeas corpus and certiorari, and from each and every part of said order.

155 Dated at the City and County of San Francisco, State of California, on the 7th day of December, 1909.

Respectfully,

LOUIS ONEAL AND
OWEN D. RICHARDSON,
Attorneys for Petitioner.

Endorsed: Filed Dec. 7 1909. Southard Hoffman, Clerk, by W. B. Maling, Deputy Clerk.

96 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Petition of Appeal.

The Petition of the Above-named Petitioner, Frank W. Brown, for an Order Allowing Appeal to the Supreme Court of the United States from the Final Order hereinbefore entered in this Case.

Frank W. Brown, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this case, on the 6th day of December, A. D., 1909, whereby it was ordered that his application for a writ of habeas corpus directed to C. T. Elliott, United States Marshal in and for the Northern District of California, requiring the said Marshal to bring and have your petitioner before this Court and his application for a writ of certiorari directed to Honorable E. H. Heacock, United States Commissioner for the Northern District of California, and to James P. Brown, Clerk of the District Court for the Northern District of California, commanding them to return all proceedings, complaint, warrants, depositions, examinations, commitments, and record of all proceedings against your petitioner to the Circuit Court of the United States forthwith for such action as

might be proper in the premises, be and the same were thereby denied;

Now come Louis Oneal and Owen D. Richardson, his attorneys and counsel, praying this Court for an order allowing your said petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that there are grave doubts as to whether the proceedings referred to in the petition for writs of habeas corpus and certiorari have not infringed the constitutional rights of your petitioner, and that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law, and that the said United States Commissioner before whom your said petitioner was arraigned, as set forth in the said petition hereinabove referred to, had no jurisdiction either to require bail of your said petitioner or to commit your said petitioner in default thereof, and that your petitioner desires in good faith to submit the constitution- questions and
98 other questions involved, to the Supreme Court of the United States for their determination.

FRANK W. BROWN.

UNITED STATES OF AMERICA,

Northern District of California, ss:

Frank W. Brown, being duly sworn, on his oath deposes and says: that he is the petitioner above named; that the foregoing petition is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

FRANK W. BROWN.

Subscribed and sworn to before me this 7th day of December, 1909.

[SEAL.]

J. B. LANKTREE,

Notary Public in and for the County of Alameda,

State of California.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

99 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Assignment of Errors.

The petition of Frank W. Brown by Louis Oneal and Owen D. Richardson, his counsel, in connection with his petition of appeal herein entered *herein* to the Supreme Court of the United States from an order made and entered in the United States Circuit Court of the Ninth Judicial Circuit in and for the Northern District of California denying the writs of habeas corpus and certiorari, *and* makes and files the following assignment of errors:

1. The Court erred in denying the petitioners writs of habeas corpus and certiorari and remanding him to the custody
100 of the United States Marshal.
2. In refusing to grant said writs.
3. In refusing to discharge said petitioner.
4. In holding that the restraint of petitioner's liberty is legal.
5. In holding that the restraint of your petitioner is not a violation of his substantial rights.
6. In holding that said alleged indictment, or any count thereof, stated an offense against the laws of the United States.
7. In holding that the alleged indictment was sufficient upon which to base a warrant of removal.
8. In holding that there was sufficient evidence of probable cause.
9. In holding that the warrant of removal made by the United States District Judge for the Northern District of California was issued upon the finding of probable cause.
10. In failing to hold that the restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in that this petitioner is entitled to be tried for said alleged offenses set forth in said indictment, and each of them, in the State and District where said alleged crimes, and each of them, have been committed, which district shall have been previously ascertained by law.
11. In holding that a warrant of removal should issue, for the reason that the proceedings conclusively show that the venue for the

facts alleged in the indictment is not in the District and State of Nebraska.

101 12. In failing to hold that the restraint of your petitioner is in violation of Articles V and VI of the Articles in Addition to and Amendment of the Constitution of the United States, and each of them, in that said indictment, and each of the counts thereof, do not charge this petitioner with any crime against the United States and show no violation by petitioner of Section 5440 of the Revised Statutes of the United States, or any other statutes of the United States, but show affirmatively that no offense has been committed by petitioner against the laws of the United States.

13. In failing to hold that the restraint of your petitioner is in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: the said indictment, and each of the counts thereof, affirmatively allege and show that the conspiracies set forth therein, and each of them, were formed and entered into more than three years prior to the finding of said indictment, and that the first overt acts committed pursuant to said conspiracies, and each of them, were committed more than three years prior to the finding of said indictment; and in this, to wit: said indictment does not allege that this petitioner consciously participated in any overt act done or committed pursuant to said conspiracies, or either of them, within a period of three years next preceding the finding of said indictment; and that, therefore, the restraint of your petitioner deprives him of his liberty without due process of law and in violation of his rights under Section 1014 and 1044 of the Revised Statutes of the United States.

102 14. In failing to hold that the restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: that the said indictment introduced in evidence and the evidence introduced before said United States Commissioner and said District Judge does not show that there is any probable cause for believing this petitioner to have committed the alleged offenses charged in said indictment, or either of them, in said District and State of Nebraska.

15. In holding that your petitioner was in the custody of the said C. T. Elliott, United States Marshal in and for the Northern District of California, and deprived of his liberty by him by due process of law.

16. For other errors appearing on the record, by reason whereof the petitioner prays that the said order dismissing the said writ of habeas corpus be reversed and the prisoner discharged from custody.

Dated December 7th, 1909.

LOUIS ONEAL AND
OWEN D. RICHARDSON,

Attorneys and Counsellors for Frank W. Brown.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

103 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Order Allowing Appeal from Order Denying Writs of Habeas Corpus and Certiorari.

The said Frank W. Brown, the above named petitioner, by and through his attorneys, Louis Oneal and Owen D. Richardson, Esq., having giving notice of an appeal to the Supreme Court of the United States from the order heretofore made by the above Court on December 6, 1909, denying the application of said petitioner for Writ of Habeas Corpus and Certiorari and dismissing said petition, and in that behalf having presented his petition for an order allowing such appeal, together with an assignment of the
104 errors to be urged by him upon said appeal.

It is ordered that said petitioner be and he hereby is allowed to prosecute an appeal to the Supreme Court of the United States from the said order denying his said application for Writ of Habeas Corpus and Certiorari; that the amount of the bond for costs to be executed and filed by said petitioner upon his said appeal be and hereby is fixed at the sum of Five hundred dollars (\$500.00); that upon the approval and filing of such bond a citation in due form issue herein, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

Dated December 7, 1909.

WM. C. VAN FLEET,

*United States District Judge, Presiding
in the Circuit Court.*

Endorsed: Filed Dec. 7, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

105 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Bond for Costs on Appeal.

Know all men by these presents, that we, Frank W. Brown, as principal, and Jos. M. Plunkett and P. J. Sullivan, as Sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred (500.00) dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

106 Sealed with our seals and dated this 7th day of December, 1909.

Whereas, lately, to wit: on the 6th day of December, 1909, at the Circuit Court of the United States in and for the Ninth Judicial Circuit, Northern District of California, in a proceeding therein pending, an order was entered denying the application of the above named petitioner for writs of habeas corpus and certiorari, and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Circuit Court to review the same,

Now, the condition of the above obligation is such, that if the said petitioner, Frank W. Brown, shall prosecute said appeal to effect, and shall answer all costs if he shall fail to make said appeal good, then this obligation to be void else to remain in full force and effect.

FRANK BROWN,	[SEAL.]
JOS. M. PLUNKETT,	[SEAL.]
P. J. SULLIVAN,	[SEAL.]

Sealed and delivered and taken and acknowledged this 7th day of December, 1909, before me

[SEAL.]

SOUTHARD HOFFMAN,

Clerk U. S. Circuit Court.

107 UNITED STATES OF AMERICA,
Northern District of California, ss:

Jos. M. Plunkett and P. J. Sullivan each being duly sworn, for himself says, that he is worth more than the sum of \$500.00 over and above all his just debts and liabilities.

JOS. M. PLUNKETT,
 P. J. SULLIVAN.

Sworn to before me this 7th day of December, 1909.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court.

Approved as to form, amount, sufficiency this 7th day of December, A. D. 1909.

WM. C. VAN FLEET,
U. S. District Judge.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

108 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of FRANK W. BROWN for Writs of Habeas Corpus and Certiorari.

FRANK W. BROWN, Appellant,
 vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Admission of Service of Citation on Appeal.

Service of a copy of the citation on appeal in the above entitled matter is hereby acknowledged this 7th day of Dec., 1909.

C. T. ELLIOTT,
United States Marshal in and for Northern District of California.

109 JAS. P. BROWN,
*Clerk of the District Court of the United States,
 Northern District of California.*
 E. H. HEACOCK,
United States Commissioner for the Northern District of California.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

110 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District
of California.

Clerk's Office.

No. 15003.

FRANK W. BROWN, Appellant,

v.

C. T. ELLIOTT, United States Marshal, et al., Appellees.

Præcipe for Certified Copy of Record and Proceedings.

To the Clerk of said Court.

SIR: Please prepare certified transcript of proceedings in the above cause, including therein the following:

Petition for writs of habeas corpus and certiorari; order denying writs and dismissing petition; notice of appeal; petition of appeal; assignment of errors; order allowing appeal; bond for costs on appeal; admission of service of citation; also all other papers properly a part of said record and proceedings.

Dated Dec. 7, 1909.

LOUIS ONEAL, AND

OWEN D. RICHARDSON,

Attorneys and Counsellors for Appellant.

Endorsed: Filed Dec. 7, 1909. Southard Hoffman, Clerk, by
J. A. Schaertzer, Deputy Clerk.

111 In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.

No. 15003.

In the Matter of the Application of FRANK W. BROWN for Writs of
Habeas Corpus and Certiorari.

Certificate to Transcript of Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing one hundred and ten (110) pages numbered 1 to 110, inclusive, to be a full, true and correct copy of the record and proceedings in the above entitled matter, and that the same constitute the record on appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record on appeal is \$63.30; that said amount was paid by Louis Oncal and Owen D. Richardson, Esqs., attorneys for petitioner and that the original citation issued in said matter is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 17th day of January, A. D. 1910.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,

*Clerk of United States Circuit Court, Ninth Judicial
Circuit, Northern District of California.*

112

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. T. Elliott, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, and entered in the Clerk's office of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, on the 7th day of December, A. D. 1909, in a cause where Frank W. Brown is appellant and you are appellees, to show cause, if any, why the order made and entered, denying the application of said appellant for writs of habeas corpus and certiorari and dismissing the petition of said appellant therefor as in the said order allowing an appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. C. Van Fleet, District Judge, presiding in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, this 7th day of December, A. D. 1909.

WM. C. VAN FLEET, *Judge.*

113 Service of the within Citation by copy admitted this 30 day of Dec., 1909.

ROBT. T. DEVLIN,

United States Attorney for Northern District of California.

[Endorsed:] No. 15003. United States Circuit Court, Ninth Circuit, Northern District of California. In the Matter of the Application of Frank W. Brown for writs of habeas corpus and certiorari.

Frank W. Brown, Appellant, vs. C. T. Elliott, United States Marshal, et al., Appellees. Citation. Filed Dec. 30, 1909. Southard Hoffman, Clerk, by J. A. Schaertzer, Deputy Clerk. Louis Oneal and Owen D. Richardson, Attorneys and Counselors for Appellant, Bank of San Jose Bldg., San Jose, Calif.

Endorsed on cover: File No. 22,003. N. California C. C. U. S. Term No. 427. Frank W. Brown, appellant, vs. C. T. Elliott, United States Marshal in and for the northern district of California, et al. Filed February 2d, 1910. File No. 22,003.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 498: 202

E. C. MOORE, APPELLANT,

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

FILED FEBRUARY 2, 1910.

(22,004.)

(22,004.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 428.

E. C. MOORE, APPELLANT,

vs.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, Northern District of California.

No. 15004.

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

Petition for Writs of Habeas Corpus and Certiorari.

To the Honorable Judges of the Circuit Court of the United States for the Ninth Judicial Circuit, Northern District of California:

The petition and complaint in writing of E. C. Moore respectfully shows:

I.

That your petitioner is a citizen of the United States of America, and is a resident of the Northern District of California, and is unlawfully imprisoned and restrained of his liberty by C. T. Elliott, United States Marshal for the Northern District of California, in the City and County of San Francisco, State and Northern District aforesaid. That your petitioner is held by said United States Marshal under color of authority of the laws of the United States by virtue of a warrant of removal claimed to have been issued, under Section 1014 of the Revised Statutes of the United States, dated, November 29th, 1909, signed by Honorable John J. De Haven, Judge of the District Court of the United States for the said Northern District of California, a copy of which said warrant of removal is hereto annexed, marked Exhibit "A," and made a part of this petition, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree, or final order of any Court.

2

II.

That the cause or pretense of the imprisonment and detention of your petitioner, according to the best of his knowledge and belief, is that a verified Affidavit of Complaint of one Charles S. Ranger was filed with Honorable E. H. Heacock, United States Commissioner for the Northern District of California, on October 14, 1909, a copy of which said verified affidavit of complaint is annexed hereto, marked, Exhibit "B", and made a part of this petition. That the indictment referred to in said Affidavit of Complaint is a certified copy of an indictment alleged to have been found and returned by the Grand Jury of the United States in the District Court of the United States for the District of Nebraska, Omaha Division, and is the same certified copy of indictment thereafter offered in evidence in the proceedings thereafter had in said cause before said Commissioner on November 1st, 1909. That a copy of said alleged certified copy of said indictment is hereto annexed, marked Exhibit "C",

and made a part of this petition. That a warrant for the arrest of your petitioner was issued by said United States Commissioner and that subsequent to the issuance of said warrant a temporary mittimus was issued for the detention of your petitioner and that thereafter, and on November 1st, 1909, an alleged commitment of your petitioner was made by said United States Commissioner to await the order of said United States District Judge; that copies of said warrant, temporary mittimus, and commitment, with the returns and endorsements thereon, are hereto annexed, marked respectively Exhibit "D," Exhibit "E," Exhibit "F"; and made a part of this petition.

3

III.

That your petitioner is named as E. C. Moore in said indictment and in all of the proceedings had against your petitioner in said cause. That all of the proceedings had against your petitioner before said Commissioner and thereafter before the Honorable John J. De Haven, Judge of the said United States District Court in and for the said Northern District of California, were and are based upon said indictment, and the proceedings subsequently had thereunder as herein alleged.

IV.

That on the 1st day of November, 1909, the matter of the removal of your petitioner came duly and regularly on for hearing before said United States Commissioner. That a full, true, and correct stenographic report of all of the proceedings then and there had and of all of the evidence then and there taken before said United States Commissioner is hereto annexed, marked, Exhibit "G", and made a part of this petition.

V.

That the certified copy of the indictment offered and introduced in evidence before said United States Commissioner is identical in words and figures with the copy of said indictment hereto annexed and marked, Exhibit "C", as hereinbefore set forth. That a copy of the certified copy of the capias of the said United States District Court for the District of Nebraska, Omaha Division, offered and received in evidence before said United States Commissioner, as aforesaid, is hereto annexed, marked, Exhibit "H", and made a part of this petition.

VI.

4 That thereafter, to wit, on November 29th, 1909, an application for the removal of this petitioner to the said District of Nebraska, Omaha Division, came on regularly for hearing before Honorable John J. De Haven, Judge of the District Court of the United States for the said Northern District of California. That no other, or additional evidence was offered or received before said Honorable John J. De Haven. That a full, true, and correct copy of the minutes of the proceedings then and there had before said Honorable John J. De Haven, District Judge, as aforesaid, and of the order then and there made, is hereto annexed, marked, Exhibit "I."

and made a part of this petition. That thereafter, and on the 29th day of November, 1909, a warrant of removal, signed by said Honorable John J. De Haven, District Judge as aforesaid, was duly delivered to said C. T. Elliott, United States Marshal as aforesaid, being the same warrant of removal heretofore described, a copy of which is hereto annexed, marked, Exhibit "A", and made a part of this petition, as aforesaid.

VII.

That the imprisonment, detention, confinement, and restraint of your petitioner are illegal, and that the illegality thereof consists in this, to-wit:

1. That the aforesaid arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of the Constitution of the United States and the Amendments thereto, and in particular as follows:

a. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States in this, to wit: the said indictment introduced in evidence, as aforesaid, shows that the District Court of the United States, in and for the Omaha Division, District of Nebraska, State of Nebraska, has no jurisdiction of the alleged offenses, or either of them, set out and alleged in said indictment, because, said indictment does not allege that the conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but alleges, on the contrary, that the conspiracies set forth therein, and each of them, were formed and entered into at a place and district unknown, and because, said indictment does not allege, nor does either of the counts thereof allege, that the first overt acts alleged to have been done pursuant to said conspiracies set forth in said indictment, or either of them, were done and committed in the said District of Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown.

That therefore the said restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in that this petitioner is entitled to be tried for said alleged offenses, and each of them, in the State and District where said alleged crimes, and each of them, have been committed, which district shall have been previously ascertained by law.

b. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Articles V and VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: the said indictment and each of the counts thereof did not and do not charge the petitioner with any crime against the United States and show

no violation by petitioner of Section 5440 of the Revised Statutes of the United States, or any other statutes of the United States, but show affirmatively that no offense has been committed by petitioner against the laws of the United States.

That therefore, the said restraint of your petitioner deprives him of his liberty without due process of law, and denies to him the enjoyment of the right to be informed of the nature and cause of the accusation.

c. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States in this, to wit: the said indictment, and each of the counts thereof, affirmatively allege and show that the conspiracies set forth therein, and each of them, were formed and entered into more than three years prior to the finding of said indictment, and that the first overt acts committed pursuant to said conspiracies and each of them, were committed more than three years prior to the finding of said indictment; and in this, to wit: said indictment does not allege that this petitioner consciously participated in any overt act done or committed pursuant to said conspiracies, or either of them, within a period of three years next proceeding the finding of said indictment.

That therefore, the restraint of your petitioner deprives him of his liberty without due process of law and in violation of his rights under Sections 1014 and 1044 of the Revised Statutes of the United States.

7 d. Said arrest, commitment, detention, and restraint of your petitioner are illegal and contrary to and in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: that the said indictment introduced in evidence as aforesaid, and the evidence introduced before said United States Commissioner, and before said United States District Judge aforesaid, does not show that there is any probable cause for believing this petitioner to have committed the alleged offenses charged in said indictment, or either of them, in said District and State of Nebraska.

That therefore, the said restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States, and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States in that your petitioner is deprived of the enjoyment of the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

VIII.

That your petitioner has duly objected to the continuance of any proceedings under the said indictment and warrant before the said United States Commissioner and before said Honorable John J. De Haven, District Judge as aforesaid, on the ground that said

Commissioner and said District Judge had and have no authority to proceed therewith on the grounds aforesaid, or any provisions of the Constitution of the United States, or the laws thereof, and that said objections have been overruled.

8 Wherefore, your petitioner prays that a writ of habeas corpus issue, directed to C. T. Elliott, United States Marshal in and for the Northern District of California, and to any person having your petitioner in custody under the authority of said Marshal commanding them to produce the body of your petitioner before this Court forthwith, together with the cause of such imprisonment and detention, and further that a writ of certiorari issue directed to E. H. Heacock, United States Commissioner for the Northern District of California, and James P. Brown, Clerk of the District Court of the United States in and for the Northern District of California, in aid of the writ of habeas corpus aforesaid, requiring the said E. H. Heacock, United States Commissioner as aforesaid, and James P. Brown, Clerk of the District Court of the United States as aforesaid, to return and certify to this Court forthwith the cause of the imprisonment of your petitioner and true copies of the proceedings, complaint, warrants, depositions, examinations, determinations, commitments, and records had before him, the said E. H. Heacock, or in the possession of him, the said James P. Brown, for such action as may be proper in the premises.

Dated, December 1st, 1909.

E. C. MOORE,
Petitioner.

LOUIS ONEAL AND
OWEN D. RICHARDSON,
Attorneys and Counsellors for Petitioner.

9 UNITED STATES OF AMERICA,
Northern District of California, ss:

E. C. Moore, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is in all respects true.

E. C. MOORE.

Subscribed and sworn to before me this 1st day of December, A. D. 1909.

[SEAL.]

J. B. LANKTREE,
*Notary Public in and for the County
of Alameda, State of California.*

10

"EXHIBIT A."

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

The President of the United States of America to the Marshal of the United States of America for the Northern District of California, and his Deputies, or any or either of them, Greeting:

It appearing to me that R. B. Herriman, Frank W. Brown, and E. C. Moore, have been committed by E. H. Heacock, United States Commissioner, for the Northern District of California, at San Francisco, for their appearance for trial before the District Court of the United States, for the District of Nebraska, Omaha Division, at Omaha, Nebraska, upon the charge of having on or about the 5th day of April, 1907, in violation of Section 5440, of the Revised Statutes of the United States, at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly conspired, confederated and agreed together and with one Ernest Fenby, and with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled, "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States;

And it further appearing to me that the said R. B. Herriman, Frank W. Brown, and E. C. Moore, are now in the Custody of the Marshal of the United States for the Northern District of California, under and by virtue of said commitment, in default of bail in the sum of Fifteen Thousand (15,000) Dollars, each;

And it further appearing that said R. B. Herriman, Frank W. Brown, and E. C. Moore, were unable to give such bail:

Now therefore you are hereby commanded, to take the bodies of the said R. B. Herriman, Frank W. Brown, and E. C. Moore, and safely deliver them into the Custody of the Marshal of the United States of America, for the District of Nebraska, Omaha, Division, at Omaha, Nebraska, to be then and there dealt with according to law.

And do you then and there deliver to the United States District Court, for the District of Nebraska, Omaha Division, at Omaha, Nebraska, which has, by law, cognizance of the offense, this Writ with your return endorsed thereon, and also make return of a copy of this Writ to the office of the Clerk of this Court.

Further Ordered that execution of this Order of Removal, be, and the same is hereby stayed for a period of three days, from the date thereof.

In testimony whereof, I have hereunto set my hand this 29th day

of November, 1909, and of the Independence of the United States the one hundred and thirty-fourth.

JOHN J. DE HAVEN,
*United States District Judge,
Northern District of California.*

12 UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify, that The Honorable John J. De Haven, whose name is subscribed to the foregoing Writ, is a Judge of the District Court of the United States of America, for the Northern District of California, duly appointed, and qualified, and that the signature of said Judge to said Writ is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court this 29th day of November, 1909, and of the Independence of the United States the one hundred and thirty-fourth.

[SEAL.]

JAS. P. BROWN.

13 UNITED STATES OF AMERICA,
*Northern District of California,
City and County of San Francisco, ss:*

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify the foregoing to be a true copy of the Warrant of Removal, issued in the case of the United States vs. R. B. Herriman, Frank W. Brown, and E. C. Moore, No. 4730.

Attest my hand and the seal of the said District Court, this 29th day of November, A. D. 1909.

[SEAL.]

JAS. P. BROWN, *Clerk,*
By FRANCIS KRULL,
*Deputy Clerk U. S. District Court,
Northern District of California.*

14 EXHIBIT "B."

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

Before me, E. H. Heacock, a United States Commissioner for the Northern District of California, at San Francisco, personally appeared this day, Charles S. Ranger, who being first duly sworn, deposes and says that:

R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin, and 36; and E. C. Moore, first real and true name to deponent unknown,

otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13, in violation of Section 5440 of the Revised Statutes of the United States, at Omaha, Nebraska, in the State and District of Nebraska, and within the jurisdiction of the District Court of the United States in and for the District of Nebraska, Omaha Division, did then and there unlawfully, wilfully, knowingly and corruptly, falsely and wickedly, commit the offense which is particularly and specifically set forth and described in a certain copy of an indictment duly found and returned in the District Court of the United States in and for the District of Nebraska, Omaha Division, a copy of which said indictment is hereto annexed and specifically referred to, and marked "Exhibit A" and made a part of this complaint.

That the persons aforesaid did commit the said offense as aforesaid with the divers other persons who are named and described in the said copy of said indictment, at the time and place, and in the manner and form as specifically described and set forth
15 in said copy of said indictment hereto attached and marked "Exhibit A."

Against the peace and dignity of the United States of America, and contrary to the form of the Statute of the said United States of America in such case made and provided.

And deponent upon his oath aforesaid, doth further say that an indictment against the said R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; and E. C. Moore, first real and true name to deponent unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13, was duly and regularly returned by the Grand Jury of the United States in the District Court of the United States at Omaha, in the District of Nebraska, on the 7th day of October, 1909, charging the said persons with the crime of conspiracy to commit an offense against the United States in violation of Section 5440 of the Revised Statutes of the United States, and that on said 7th day of October, 1909, a *capias* was regularly issued out of said Court for the arrest of the persons aforesaid.

That the said R. B. Herriman, first real and true name to deponent unknown, otherwise called George Wilson, George Bennett, James Gates, and 12; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; and E. C. Moore, first real and true name to deponent unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck, and 13, are now within the State and Northern District of California.

Wherefore, deponent prays that they may be apprehended
16 and further dealt with according to law.

CHARLES S. RANGER,
Post Office Inspector.

Subscribed and sworn to before me this 14th day of October, 1909.

E. H. HEACOCK,
United States Commissioner as Aforesaid.

17 EXHIBIT "C."

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, ss:

In the District Court of the United States in and for the Omaha Division of the District of Nebraska, in the Eighth Judicial Circuit, in the Term Beginning the Twenty-seventh Day of September, in the Year of Our Lord One Thousand Nine Hundred and Nine.

The Grand Jurors of the United States of America, drawn from the territory comprising the Omaha, Norfolk, Chadron, Grand Island, and North Platte Divisions of the District of Nebraska, and sitting in the Omaha Division, being duly impaneled, sworn and charged by said Court to inquire within and for the said Divisions, upon their oaths do present and say that John C. Mabray, otherwise called R. Barrett, Joseph Johnson, J. J. Barrett, A. B. Craft, T. A. Bradley, J. C. Gordon, J. J. Carroll, 66; and B; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin, and 36; R. B. Herriman, first real and true name to the grand jurors unknown, otherwise called George Wilson, George Bennett, James Gates and 12; E. C. Moore, first real and true name to the grand jurors unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13; Frank D. Scott, otherwise called George Wilson, George Maxwell, J. W. Maxwell, Floyd Kelly, W. Gilmore and A; Ed Ellis, first real and true name to the grand jurors unknown, otherwise called 18 Ed. Crawford and D; Willard Bennett, otherwise called W. Hemmingway and 114; Frank M. McCall, otherwise called Monte McCall, F. M. Clark, George Guernsey, George Wilson, George Boyle, George Carter, John Knox; James S. Johnson, otherwise called Jay Lovejoy; Isadore J. Warner, otherwise called Doctor James, Kid Warner and 135; W. H. Barton, first real and true name to the grand jurors unknown, otherwise called 129; B. Beamolt, first real and true name to the grand jurors unknown, otherwise called 69; George A. Bradley, otherwise called Geo. Keller and 15; George H. Bradley; J. H. Beath, first real and true name to the grand jurors unknown, otherwise called 51; John Carkeek, otherwise called Jack Carkeek and 60; Fred Cann, first real and true name to the grand jurors unknown, otherwise called 61; Clarence Class; W. I. Crider, first real and true name to the grand jurors unknown, otherwise called 33; Herbert Coon, otherwise called Brass Kid and 108; J. E. Coon, first real and true name to the grand jurors unknown, otherwise called J. E. Allen and 150; William J. Conners, otherwise called Wm. Carson and W. Richmond; G. H. Verstreten, first real and true name to the grand jurors unknown, otherwise called J. C. Cramer and 2; E. J. Dunn, first real and true name to the grand jurors unknown, otherwise called Ed. J. Davis and 42; Irvie Dunn, otherwise called 14; Tom Davis, first real and true name to the grand jurors unknown, otherwise called 1; John R. Dobbins,

otherwise called Beckie Dobbins; Harry Forbes, otherwise called 50; Clarence Forbes, otherwise called 87; W. S. Gibson, first real and true name to the grand jurors unknown, otherwise called G. W. Garden and 49; R. E. L. Goddard, first real and true name to the grand jurors unknown, otherwise called 58; Tom Gay, first real and true name to the grand jurors unknown, otherwise called 19 Thos. Grant and 100; D. E. Griswold, first real and true name to the grand jurors unknown, otherwise called 156; W. A. Garthie, first real and true name to the grand jurors unknown, otherwise called Al. Barney and 86; H. C. Howard, first real and true name to the grand jurors unknown, otherwise called 64; L. E. Hindman, first real and true name to the grand jurors unknown, otherwise called Honey Grove Kid and 71; Win S. Harris, first real and true name to the grand jurors unknown, otherwise called 22; W. D. Godefroy, first real and true name to the grand jurors unknown, otherwise called 55; Boone B. Jacobs, otherwise called B. B. Davis and 44; Ed. Leach, first real and true name to the grand jurors unknown, otherwise called A. Riley and 18; Leon Lozier, otherwise called D. H. McLeon, Tom Rogers and 21; F. S. Mull, first real and true name to the grand jurors unknown, otherwise called 141; Frank Myers, otherwise called 96; Ed. McCoy, first real and true name to the grand jurors unknown, otherwise called 4; A. V. C. McPherson, first real and true name to the grand jurors unknown, otherwise called 70; Ole Marsh, first real and true name to the grand jurors unknown, otherwise called Joe Carroll and 22; Eddie K. Morris, first real and true name to the grand jurors unknown, otherwise called 11; Barney Martin, otherwise called 147; J. R. Morrison, first real and true name to the grand jurors unknown; Walter Nolon, otherwise called W. S. Thornton, W. H. Martin and 9; C. F. Philpot, first real and true name to the grand jurors unknown, otherwise called 74; P. A. Pulley, first real and true name to the grand jurors unknown, otherwise called 75; Ernest L. Powers, otherwise called E. L. McCabe; Willard Powell; H. K. Robine, 20 first real and true name to the grand jurors unknown, otherwise called H. K. Jackson and 148; Tom S. Robinson, first real and true name to the grand jurors unknown, otherwise — T. McEnerney, T. Castle and 8; George Ryan, otherwise called 63; John C. Smith; Bert R. Shores, first real and true name to the grand jurors unknown, otherwise called Bert Warner; Young Hackensmith and 48; Louis W. Stowe; William Scott, otherwise called 131; Frank Scott; Charles L. Scott, otherwise called C. L. Seaton and 142; Tom Tyner, first real and true name to the grand jurors unknown, otherwise called 68; J. L. Wright, first real and true name to the grand jurors unknown, otherwise called 113; J. R. Wile, first real and true name to the grand jurors unknown, otherwise called 157; Dick Beatt, first real and true name to the grand jurors unknown, otherwise called Dick Bennett; Ed Leonard, first real and true name to the grand jurors unknown; Joe Acton, first real and true name to the grand jurors unknown; Harry Gorman, otherwise called John Gorman, Harry Price, Harry Wright, and A; John Casey, first real and true name to the grand jurors unknown, otherwise called Billy

Murphy, Billy Casey, H. Wright; Darby, real and true name to the grand jurors unknown, otherwise called John Carter; John Caset, Jack McCormick; Chubb, real and true name to the grand jurors unknown; J. Fite, real and true name to the grand jurors unknown; Tom Rogers, real and true name to the grand jurors unknown, otherwise called Jack Rogers, Tom Wilson, and 10; Jim Griffin, first real and true name to the grand jurors unknown, otherwise called Jim Barry; Johnnie Murphy, real and true name to the grand jurors unknown, otherwise called H. K.; Charles A. Wilhelm, otherwise called Charles Barrett, Johnnie Murphy, Jack Murphy, Tom Murphy and 102; Ben Marks, first real and true name to the grand jurors unknown, otherwise called 76; William Flemming; D. C.

21 Middleton, first real and true name to the grand jurors unknown; Ed. W. Brown, first real and true name to the grand jurors unknown; Marion C. Barnes, alias Bob Barnes; John Deeney, otherwise called Jack Feeney; George Adams; E. J. Dayton, first real and true name to the grand jurors unknown; C. C. Barker, first real and true name to the grand jurors unknown; Dave Finley, otherwise called J. Nelson; Orie Fields, otherwise called Lew Holland and 10; all of the above named persons hereafter in this indictment called conspirators, heretofore, to-wit, on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, did then and there, unlawfully, wilfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with divers other persons to the grand jurors unknown, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an act of Congress enacted March 2, 1889, entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails;" that is to say, the said conspirators did then and there unlawfully, wilfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with said divers other persons to the grand jurors unknown, in devising and intending to devise a scheme and artifice to defraud various persons out of their money and property, to be effected by means of the Post Office establishment of the United States, and particularly to defraud H. J. Hollister, A. A. Van Cleave, Joseph W. Leisen, F. R. Marts, Dr. C. C. Vander Beck, Ed Jones, James Webber, Geo. A. Quinby, C. M. McCain, Max Linderbaum, M. Jackson, J. M. Turner, N. A. Kitchell, Louise Pendell, F. Ellison, Ed. Stenger, W. H. McGrath, Z. Pierpont, John Hermelbrecht, M. Meuer, R. L. King, A. Harrington, C. E. Hayward, Edwin James, F. X. Roethle, Wm. H. Stine, J. C. Bowman, M. S. Mansfield, Joseph P. Walker, R. W. C. Shull, John Corbin, Thomas Gale, George L. Brown, Cecil E. Walker, Adolph Yeske, E. G. Alspaugh, Samuel Sutor, D. C. Harrington, J. E. Harrington, W. H. Bedford, P. W. Whalen, Jas. Servais, Ralph P. Mattingly, Alexander Delain, George F. Castle, Geo. S. Bedford, T. W. Ballew, John Bieger, C. Nelson Pratt, C. A. Nelson, Henry Ruhsert, Thos. Agern, John Kozlek, W. B. Woods, H. Ford, O. L.

Cramer, Hans Anderson, R. A. Frazer, J. B. Titterington, A. J. Olson, Frank R. Baker, C. W. Field, Dr. J. C. Parrish, Junior, J. H. Secrest, A. F. Cook, James Tierney, Wm. Burke, Lee J. Schiff, S. McNairn, H. A. Berthold, W. C. Waegner, Jos. A. Young, E. L. Collins, T. E. George, J. E. Cavanaugh, A. S. Johnson, J. W. Springborn, E. S. Bessey, John H. Sizer, Wm. Dwyer, J. P. Schuermann, C. T. Woods, Eugene Schmitt, Henry Stoggsdill, George D. Alberts and A. E. Pierce, hereinafter in this indictment called victims, and divers other persons to the grand jurors unknown, of their money and property by the said conspirators then and there agreeing to organize, institute, conduct, and manage certain horse races and athletic contests including prize fights, wrestling matches and foot races as wagering contests, upon which money should be bet, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis in the State of Missouri, at Little Rock, in the State of Arkansas, at Denver, in the State of Colorado, at New Orleans, in the State of Louisiana, at Seattle, in the State of Washington, and divers other places to the grand jurors unknown, which said races were to be conducted in a fraudulent, unfair and dishonest manner, by some of the said conspirators taking part in said races as jockeys and riding said horses, and other of said conspirators taking part in said athletic contests as prize fighters, wrestlers and foot race-s, so that said races and athletic contests were to be managed and controlled solely by the said conspirators, so that they themselves should control the result of such contests and

23 render the outcome certain and known in advance to them, and that no one but said conspirators should take part in riding any of the horses in said races or take part as an athlete in any of said athletic contests, for the purpose and with the intent to defraud the said victims and said divers other persons to the grand jurors unknown, out of their money and property; and the said conspirators were further then and there, and at Omaha, District aforesaid, by the following transactions and false and deceitful and fraudulent representations, to execute said unlawful scheme and artifice to defraud and to effect the object of said conspiracy, that is to say, by the said conspirators then and there agreeing to represent to said victims and said divers other persons to the grand jurors unknown, that some of the conspirators were millionaires traveling through the United States making large investments in municipal, state and county and city bonds, interurban railway projects and also timber, coal, mining and oil interests and had with them race horses and jockeys, also athletes to engage in prize fights, wrestling matches and foot races, and that, for their own amusement and recreation, they would match their horses with those of strangers in races, and would also match their athletes in prize fights, wrestling matches and foot races with persons who desired to contest, and that another of the conspirators was a private secretary to the said millionaires and that he had charge of the management of these races and the said athletic contests; that heretofore he had always managed said races and athletic contests to the great financial profit and gain as well as to the amuse-

ment of his employers, the said millionaires, but that he had become aggrieved and offended at the treatment received at the hands of his said employers and therefore would manage certain of these horse races and athletic contests by secret arrangement and deals

24 with the said jockeys and said athletes so that the said millionaires' horses and athletes would be defeated and the said millionaires would lose any money which they might

bet or wager on the said races, and athletic contests, and that in these certain races and athletic contests, the said private secretary was desirous of betting against his employers, the said millionaires, and thereby winning their money for himself and for such other persons as would bet for him and as his secret agents; that others of the conspirators were further to represent to said victims and said divers other persons to the grand jurors unknown, that they were friends and relatives of the said private secretary and had been requested by him to assist him in procuring men of financial standing and responsibility to come and act as his secret agents and bet his money for him against the said millionaires on said races and athletic contests; that it was necessary for the said private secretary to procure such persons of financial standing and responsibility to represent him and bet his money for him in order to keep the fact of his disloyalty to his employers secret from them and that such persons would not be required to bet any of their own money, but only such money as should be furnished to them by the said private secretary, and that they should be paid for their services a percentage of the amount won in so betting on said horse races and athletic contests and that if said victims and said divers other persons to the grand jurors unknown would bring letters of credit or negotiable paper for large sums of money and by means thereof would establish a credit at the bank in the town where the said races and athletic contests were to be conducted, then the said private secretary would consider them of satisfactory financial ability and standing to so act for him as his secret agents and bet his money for him as aforesaid; that it was further then and there agreed by the said conspirators that when

25 any of the said victims and said divers other persons to the grand jurors unknown should, relying on said false and fraudulent representations, bet and wager money furnished

them by the said private secretary as aforesaid on said races and athletic contests, they should subsequently be informed by the said private secretary or some other one of the conspirators, that part of the money furnished to them by the said private secretary was not in fact the money of the said private secretary, but was the money of his said employers, and that the said millionaires had or might become suspicious that the money so bet was not in fact the money of the said victims, but that there was or might be some collusion between the said victims and the said private secretary, who should act as stakeholder of the money bet on said races and athletic contests, and that to prevent exposure, disgrace and criminal prosecution, and the said races and athletic contests being

immediately stopped and called off, it would be necessary for the said victims and said divers other persons to the grand jurors unknown, to come to the rescue of the said private secretary by obtaining the money for the letters of credit or the negotiable paper they had brought with them and to turn over the large sums of money received therefrom to the said private secretary for his own temporary use, or to bet their said money for him on said races and athletic contests, to allay the suspicions of the said millionaires and insure the said races and athletic contests proceeding to a finish as they had been arranged for, and that the said money would be returned to the said victims and said divers other persons to the grand jurors unknown immediately after said races and athletic contests, on which said money should be bet and wagered as aforesaid, should have taken place; that it was further then and there agreed by the said conspirators that immediately after the said races and athletic contests should have taken place and large sums of money bet and wagered

26 thereon, as aforesaid, by the said victims and the said divers other persons to the grand jurors unknown, with some of the said conspirators, and the money so bet by them, the said victims and the said divers other persons to the grand jurors unknown, should have been won by the said millionaires and conspirators, through and by means of said false and deceitful and fraudulent representations and transactions, and said dishonest, deceitful and fraudulent horse races and athletic contests, that the said conspirators should further, in pursuance of said conspiracy, scheme and artifice to defraud, and to effect the object of said conspiracy, represent to the said victims and said divers other persons to the grand jurors unknown, that the said races and athletic contests had terminated unfortunately through an unusual and deplorable accident, to-wit, a serious injury to one of the jockeys riding the horses in the said races, or one of the athletes engaging in said athletic contests on which the said victims and the said divers others persons to the grand jurors unknown should have bet and wagered large sums of money as aforesaid and entrusted their own money to said private secretary, as aforesaid, or bet the same as aforesaid, and that it would be unfair to declare themselves the winners finally and take the money so bet and put up in the hands of one of the conspirators as stakeholder, and that therefore, under such unfortunate circumstances, they would grant additional races and athletic contests, so controlled and managed as aforesaid, on future dates, when the said victims and said divers other persons to the grand jurors unknown, would be given an opportunity to win back said money otherwise so unfortunately lost as aforesaid, by wagering additional large sums of money and placing the same in the hands of said conspirators; and said conspirators were further to represent to said victims and said divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice

27 to defraud and to effect the object of said conspiracy, that the said victims and said divers other persons to the grand

jurors unknown had been mixed up in a criminal transaction resulting in a serious injury to a person as aforesaid, and that to avoid arrest and criminal prosecution, public exposure and disgrace, the said victims and said divers other persons to the grand jurors unknown, should depart from the scene of said races and athletic contests, to their homes at once and not disclose to the public any of the aforesaid transactions; that thereupon the said private secretary was to convert the money of the said victims and said divers other persons to the grand jurors unknown, entrusted to him, or bet as aforesaid, to the use and gain of the said conspirators.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said statements and representations to be made by the said conspirators, as aforesaid, to said victims and said divers other persons to the grand jurors unknown, were false, fraudulent and untrue and were to be made for the purpose of and with the intent of deceiving and defrauding the said victims and said divers other persons to the grand jurors unknown, out of their money and property, and to be made in pursuance of said scheme and artifice to defraud and for the purpose of enabling the said private secretary and the said other conspirators to obtain possession of the money and property of the said victims and the said divers other persons to the grand jurors unknown, as aforesaid, and thereupon convert the said money to their own use and gain; all of which the said conspirators then and there well knew and intended.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that the said unlawful conspiracy
28 was one growing out of and based upon the existence of the facts and transactions herein set forth and was to be effected and carried out in the manner and by the means and methods herein described, and the said conspirators were further in executing said scheme and artifice to defraud, and to effect the object of the said conspiracy, to rent a United States post office box for the delivery of mail, in the United States post office at Omaha, in the State of Nebraska, District aforesaid, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis, in the State of Missouri, at Denver, in the State of Colorado, at Little Rock, in the state of Arkansas, at New Orleans, in the State of Louisiana, at Los Angeles, in the State of California, at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown, where any of said conspirators should establish headquarters in furtherance of said scheme and artifice to defraud and to effect the object of said conspiracy, and were to assume and request to be addressed by the number of said post office boxes respectively and carry on their correspondence with each other, through and by means of the post office establishment of the United States by the use, as aforesaid, of such assumed title numbers, without the use of their own proper names; and were further then and there in executing said unlawful scheme and artifice to defraud, through and by means of the post office establishment of the United States, and to effect the object of said conspiracy, to assume names

other than their own proper names and request said victims and said divers other persons to the grand jurors unknown, to address letters by such assumed named to be transmitted through and by means of the post office establishment of the United States to said conspirators; and said conspirators were further, in executing said

29 schemes and artifices to defraud by means of the use and misuse of the said post office establishment of the United

States as aforesaid, to take and receive said letters so addressed, from and out of the United States post office at Omaha, in the District of Nebraska, aforesaid, also at Council Bluffs, in the State of Iowa, also at Davenport, in the State of Iowa, also at St. Louis, in the State of Missouri, also at Denver, in the State of Colorado, also at Little Rock, in the State of Arkansas, also at New Orleans, in the State of Louisiana, also at Los Angeles, in the State of California, also at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown; said conspirators were further, in pursuance of said unlawful scheme and artifice to defraud, and to effect the object of said conspiracy, to write and send letters and communications to each other through and by means of the post office establishment of the United States, by depositing and causing said letters to be deposited in the United States post offices at Omaha, in the District aforesaid and said other post offices, and other post offices to the grand jurors unknown, which said letters were then and there to be of and concerning and in pursuance of the said scheme and artifice to defraud in this: that said letters and communications, so to be written and mailed as aforesaid, were to contain and set forth the aforesaid false deceitful and fraudulent representations and transactions, or were to be of and concerning said scheme and artifice to defraud, and were to be shown by any of the said conspirators so receiving such letters, as aforesaid, to the said victims and to said divers other persons to the grand jurors unknown, and read by them, with the intent and for the purpose of inducing said victims and said divers other persons to the grand jurors unknown, to rely on said false representations and transactions, and turn over to the said conspirators large sums of money, as aforesaid, to be unlawfully converted by the said conspirators to their own use and gain, as aforesaid

and the said conspirators were then and there further, in

30 pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, to use the post office establish-

ment of the United States by opening correspondence with the said victims and said divers other persons to the grand jurors unknown and procuring and inciting the said victims and the said divers other persons to the grand jurors unknown, to open correspondence as aforesaid, with Frank Sutor, H. N. Harding and divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice to defraud and to effect the object of the said conspiracy.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that the said wicked and corrupt conspiracy combination, confederation and agreement was originally formed

and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and District whereof is to the grand jurors unknown, and until the twenty-third day of February, in the year nineteen hundred and nine, continuously and at all times during the four years next preceding the said twenty-third day of February, in the year one thousand nine hundred and nine, said wicked and corrupt conspiracy, combination, confederation and agreement was continuously in existence and in the process of execution and operation and including all of said times, and the said conspirators did knowingly, falsely, wickedly, and corruptly conspire, combine, confederate and agree together as aforesaid, and with said Ernest Fenby and said divers other persons to the grand jurors unknown, as aforesaid.

31

Overt Acts.

1. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said unlawful conspiracy, combination, confederation and agreement aforesaid, and to effect the object thereof, the said John C. Mabray, under the assumed name of R. Barrett, afterwards, to-wit, on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly rent a United States post office box for the delivery of mail, to-wit, box number 58, in the United States post office at Omaha, in the District aforesaid, and then and there executed a partly written and partly printed application therefor in the words and figures following, to-wit:

Form 1092½.

Application for Post Office Box.

4/5 1907.

The undersigned hereby makes application for the use of a box in the — Post Office, subject to the Postal Rules and Regulations, to all of which he hereby agrees, with the distinct understanding:

1. That the rent of the box herein applied for is to be paid quarterly in advance at rates ordered by the Post Office Department, and that the box shall be closed and may be rented to another applicant if rent remains unpaid ten days after the first day of each quarter.

2. That the box shall not be used for the promotion of any fraudulent purpose nor in pursuance of any illegal business, nor assigned nor transferred to any other person.

3. That the box is to be used only for the reception of the mail

32 matter addressed to the undersigned, or the members of the firm (or corporation) whose names are written below;

Write here the name of applicant, or when a firm, the names of the members thereof, in full, who are entitled to get their mail in Box No. —.

Box No. 58.

Approved:

Signature of Applicant:
R. BARRETT.

Location, —.
Business, timber.

References:
BILLY NESSELHOUSE,
1409 Douglas
CHAS. LESIS,
Orpheum Saloon

Postmaster.

Attention is directed to the current edition of the Postal Laws and Regulations and to the Postal Guide for further information relative to boxes and box rent.

5-4250.

2. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement aforesaid, the said R. B. Herriman, first real and true name to the grand jurors unknown, on to-wit, the eighteenth day of June, in the year one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, District aforesaid, a certain letter under the false, fictitious and assumed address and name of "Mr. James Gates Omaha Neb. (Gen. delivery),"

33 a name and address other than his own proper name and address, and he, the said R. B. Herriman, having theretofore requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware.

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, Jun- 15, 1907.

Mr. James Gates, Omaha, Neb.

FRIEND GATES: Enclosed find draft (on Chicago) for \$1000.00 to apply as forfeit money on our deal pending subject to our written conditions in your possession.

Yours truly,

F. R. MARTS."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said R. B. Herriman then and there well knew.

3. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement aforesaid, the said R. B. Herriman, first real and true name to the grand jurors unknown, on to-wit, the eighteenth day of June, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take, and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha,

District aforesaid, a certain letter, under the false, fictitious and assumed address and name of "Mr. James Gates Omaha Neb. (Gen. delivery)," a name and address other than his own proper name and address, and he, the said R. B. Herriman, having theretofore, requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware.

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, Jun- 15, 1907.

Mr. James Gates, Omaha, Neb.

FRIEND GATES: I have sent you a letter about the draft which you can use to show the other parties & in this one wanted to review the situation a little. It seems to me it was a great misfortune that the accident happened to Tom or it would have been all over with & I believe to our entire satisfaction but that can't be helped & as new conditions arise they must be met in some way the best it can since I have come home I find in my financial affairs things have gone worse than I had expected & I am tangled up so it looks as though it would be impossible for me to raise \$3000.00. I have not intimated in any way to my bank anything about our deal. I have done nothing else but work & plan to get together what I can even if I can't get all. If I should never appear there again I would be out the \$1000.00 and my *reputation which is the big part* of course I was not in the beginning to put any of the cash but at a critical point for you & to keep things moving put up what I had. this is an emergency case & maybe we all will need to do some things that under ordinary cases we would not. I have a brother here that could

and possibly would help me some if he could know it was safe he knows I was over there to sell tickets on my proposition & that I was planning to attend a match some time now he is perfectly reliable & the most reticent about telling business

affairs of any man I ever knew I would not think of sending him over to look the situation over with a view to helping us without you thought best I wish you would send me Mr. Rileys address please send me copy of forfeit contract at once and I think when you were comparing at the hotel the lists of amts. put up you had my list if so please send it to me as I want to have it. Tom side was pretty sore when we got to Des Moines but he thought it would be in pretty good shape in a week. let me hear as to how things are moving.

Yours truly,

F. R. MARTS.

P. S.—Do you think there is any danger of them coaching Murphy any. suppose they would offer him all the forfeit money if he would win what effect would it have on him. If it was practical Tom and I will remember him. If he should go over to them he would ruin his reputation which would be more to him a young man than the entire purse because it would be public news then. do any of those 3 men Hamilton Foster & Gordon make their residence in Omaha and are they with or likely to be with Murphy much in the next few days & before the contest takes place again. do you think Murphy a match for Tom if both done their level best.

MARTS."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said R. B. Herriman then and there well knew.

3. And the grand jurors aforesaid, upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement aforesaid, the said 36 Ed. Leach, first real and true name to the grand jurors unknown, on to-wit, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha, District aforesaid, a certain letter under the false, fictitious and assumed address and name of "Mr. A. Riley Arcade Hotel Omaha Neb.," a name and address other than his own proper name and address, and he, the said Ed. Leach, having theretofore requested the said F. R. Marts to so address him and write and mail said letter, and which said letter is in the words and figures following, to-wit:

"Dry Goods, Notions, Boots and Shoes, Hardware.

F. R. Marts, General Merchandise.

Complete Line of Groceries, Grocer's Drugs, Patent Medicine, Paints, Oils.

POLK CITY, IOWA, *Jun- 25, 1907.*

Mr. A. Riley, Omaha, Neb.

FRIEND RILEY: Rec your telegram at 6 P. M. this eve am glad to know thinks are all right at your end I have been pushing as hard as I could have 2000.00 together available one man that would help is away in Neb, on a suit looking for him back for the last day or so we think he will be able to fix us up at once if not we are planning to dig it up some where else as soon as I can start will wire you Tom is ready any time I have not heard from Gates.

Yours truly,

F. R. MARTS."

37 That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said Ed. Leach then and there well knew.

5. And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement, the said Bert R. Shores, first real and true name to the grand jurors unknown, on to-wit, the ninth day of September, in the year of our Lord one thousand nine hundred and seven, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly, deposit, and cause to be deposited in the United States Post Office at Omaha, District aforesaid, a certain letter enclosed in an envelope, addressed as follows, to-wit: "Mr. Geo. Alberts Minneapolis Minn. Gen. Del.," which said envelope was then and there postmarked "Omaha, Neb. Sep. 9 2:30 P. M. 1907," and had placed thereon a United States Postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to-wit:

(1)

"The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., *Sept. 8th, 1907.*

DEAR FRIEND GEORGE: I will now tell you of my plan to beat this Club out of a big bunch of money as I told you before my cousin is Magr. for these people and make all matches. I have won 8 matches before this Club and have never lost a fall to any one. Now these people here think I am invincible and will back me for an awful chunk of money agains- anyone my cousin may match me with they think it will be easy for me to beat Gotch or

anyone else and have given my cousin authority to match me for \$10,000 against any one Now I know and So dose my

(2)

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

cousin that I stand no show against top notchers but these club members have no more idea about a wrestler than an old woman has, as I said before I have won *matched* before this club and have never lost a fall but my cousin has never matches me unless he was sure I could win as we have been expecting to get a bunch of money later on its nothing to see \$10,000 or 20. or \$30,000 bet at this club on a Wrestling Match and on one of my matches they bet over \$50,000 now this may sound like big money to you and so it is but even such sums as I have mentioned seem small to these men Now I and my Cousin knows

3.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 19—.

that it will only be a question of time until some wrestler will come along and be-t me and then the chance of a life time will be gone So we have decided to get this money ourselves as I told you before and I want you to come down and help us out and if you can get the right kind of a man to help us out I will make you more money on this one play than you ever made before in your life. Now here is our plan and I know it to be a good one I told my cousin all about you Now we want you to get some friend of yours to come down here with you and back you against me. I don't want your friend to furnish

39

4.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

or bet a dollar of his own money all we want him to do is to back you with our money and do as we tell him to. Now your friend must be a man that can make a financial showing and make this play look reasonable I will show you why we want this it is merely to make a play look natural and keep the Club members from being suspicious of I and my cousin after it is over with your friend must be closed mouth and not tell this to any one either before or after for this is worth good money to us and we don't want to loose it and if thing is properly handled we may have a chance to get more money later on. Now we want your friend to

5.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ———, 190—.

make his financial showing in one of the local Banks here he can make it in any way he sees fit but I think a letter of credit would be the best and the larger the better it will be for us it will make it easier for us to beat these people and we can make those loose more money than we could if they thought you couldnt afford to loose the money. it isnt a question of how — money they will loose but how much we think best to let them loose they are all very wealthy and \$10,000 is no more to one of them than 10- dollars is to you or I. and they wouldnt holler if they lost a 100,000 but of course we want let them loose that much but

40

6.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ———, 190—.

we will let them go quite aways about \$60 or \$70,000 I think Now this may sound big but if you will bring the right kind of a man to help us out I will show you that I have set the amount to small instead of to large and I will bet you the best suit of clothes in Omaha that we can win over \$50,000 on the match your friend should be able to make a showing of at least \$10,000 or \$15,000 D. an more if possible Now I and my cousin have figured a long time on this play and I know the way we have planned is the best but of course we can talk it over after you get here and lay our plans accordingly but I am positive by following

7.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ———, 190—.

our plans everything will go fine and no one will ever know but what I wasn't beaten on the square of course you understand I and my cousin are working on this deal together my cousin is a fine fellow closed mouthed and will do just as I say now I and my cousin will want 50% of all the winnings and your friend are to have the other 50% that is after we take out \$500 for expences we have been to so far Now don't think we are unreasonable in wanting 500 extra for if you will look at it in the right light you will see we are entitled to it for we lay all plans and furnish all the money We can't use any one

8.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ———, 190—.

here to help us out for they might have a friend in the club and

they would tell and that would queear all you want to be
 41 sure of your friend before you bring him for after the match
 is over all the money will be turned over to him and he will
 have in his posetion 80,000 or \$100,000 and may be more and if
 he wasn't a good honest fellow we might have trouble in getting
 our share So be sure and bring some one you can trust Now read
 this letter carefully so you will understand it and explain to your
 friend that I do not want him to furnish or bet a dollar of his own
 money now would I let him if he wanted to. But

9.

The Paxton,
 Ralph Kitchen, Mgr.
 European Plan.

OMAHA, NEB., ——— —, 190—.

he must make the showing in the way I have said and if he can't
 do that don't bring him now matter how good of a fellow he may be
 for we can't use him and he would be of no use to us what ever for
 the Showing is what we must have to make the play look natural
 You see after he has bet 10 or \$15000 dollars that we will give to
 him we will want him to show his letter of credit and these people
 can then see he is a man of standing and has money in that way
 and they will never have any suspicion of anything wrong this is
 a great play and worth doing

10.

The Paxton,
 Ralph Kitchen, Mgr.
 European Plan.

OMAHA, NEB., ——— —, 190—.

right we can pull it of in public or private but I think private will
 be the best as I am sure they will bet more freely in private than
 in public but we can agree on that after you get here it will only
 take 3 or 4 days to pull it off after you get here and I want you
 to come just as soon as possible my cousin is always refereee and
 most always stakeholder so you see we have everything our own
 way all we want your friend to do is to fix himself so is to
 42 make his financial showing in one of the local Banks here as
 it would look unreasonable

11.

The Paxton,
 Ralph Kitchen, Mgr.
 European Plan.

OMAHA, NEB., ——— —, 190—.

for him to carry 40 or \$50,000 in currency Remember all we want
 is the showing in the local Bank here So these people can see that he
 has money on deposit he can have his banker there fix him with
 some Bank here Well I have written a long letter and explained
 as well as I can but can explain much better when you get here
 this deal will be easie but must look natural you see we will make

the match for 10,000 a side and then win the rest in side bets and it will be a ferful chunk Now be sure of your friend and tell him not to tell a soul for some one might have a relitive

12.

The Paxton,
Ralph Kitchen, Mgr.
European Plan.

OMAHA, NEB., ——— —, 190—.

of some kind here and write and tip the whole thing off let everything else go and attend to this at once for it's a chance of a lifetime. Wire me C/o this Hotel as soon as you get this and let me know if you can arrange to come at once also wire me the train you leave on and I will meet you at Depot Now be sure and follow the instructions I have give you. Hoping to see you soon

I am your Sincer Friend,

BERT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy, all of which the said Bert R. Shores then and there well knew.

43 6. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy, combination, confederation and agreement, the said William Scott, on to-wit, the fourteenth day of April, in the year of our Lord one thousand nine hundred and eight, at Homer, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly deposit and cause to be deposited in the United States Post Office at Homer, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope and addressed as follows: "Henry Stogsdill Cabool Mo Texas County", which said envelope was then and there postmarked "Homer Apr 14 1 P M 1908 Nebr", and had placed thereon a United States Postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in words and figures following to-wit:

"APRIL 13-4 1908.

Mr. Henery Stoggill Dear fried will write you as I have just got your letter & I am of the same opinion you Have But I am not a guessing I know Bill says that I won't loose a cent & I know I won't. I was with you all the time they said they knew I would not trim you & they played it over my Head I have got next to the game and I tell you it is the slickes chence I ever saw & now if you can get a man down there you need not Be afraid But what you will get your part if you come write me at Homer Neb & I will meet you in Council Bluff at the Grand Hotel & Have everything in good shape we can pull it off in Omaha. Thes fellowes are just as slick as thos others You get a man for all you can as

we can make Him Beleave we lost it. Henry if you mean business we will get more than one I will work with you I think
 44 we ought to get our money Back & plenty more Direct to Homer Neb & I will meet you in Council Bluffs Iowa at grand Hotel any time you wire me or write me.

WM. SCOTT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, and to effect the object of said conspiracy; all of which the said William Scott then and there well knew.

7. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, the said William Scott, on to-wit, the nineteenth day of May, in the year of our Lord one thousand nine hundred and eight, at Pender, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly deposit, and cause to be deposited, in the United States Post Office at Pender, District aforesaid, for mailing and delivery, a certain letter, enclosed in an envelope, addressed as follows, to-wit: Henry Stoggsdill Cabool Mo Texas County", which said envelope was then and there postmarked "Pender May 19 5 P M 1908 Nebr.", and had placed thereon a United States postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to-wit:

"HOMER NEB May 19 1908

Mr Stoggill Dear Sr will answer your letter & let you know that I have everything ready to do the Business we can pull it off in Omaha as there we can get the Bank roll. I will either come down to your place or meet you in K C any time you say We can't do this in K C nor St Louis as the town has to be fixed. Where-
 45 ever it is pulled off we will take them for 1600.00 or 2000.00 either one if we can't get more. this is all your friend

WM. SCOTT."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said William Scott then and there well knew.

8. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation, and agreement aforesaid, the said Charles L. Scott, on to wit, the fourteenth day of July, in the year of our Lord one thousand nine hundred and eight, at Omaha in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, wilfully and knowingly take and receive, and cause to be taken and received, from and out of the United States Post Office at Omaha,

District aforesaid, a certain letter under the false, fictitious and assumed address and name of "C. L. Seaton Omaha Neb. care of Murray Hotel," a name and address other than his own proper name and address, and he, the said Charles L. Scott having heretofore requested the said Adolf Yeske to so address him and write and mail said letter, and which said letter is in the words and figures following, to wit:

"BILLINGS, MONT., *July 11, 1908.*

C. L. Seaton, Esq.

DEAR SIR: I will call on you at the Murray Hotel about July 20th. I would have called on you before but could — get my business in shape so I could get away. It is very hot now in Montana and if we don't get a good rain soon it will give the dry farming a
46 hard fight.

Yours truly,

ADOLF YESKE,
Warden, Montana."

That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said C. L. Seaton then and there well knew.

9. And the grand jurors aforesaid upon their oaths aforesaid do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, the said Frank M. McCall, on to-wit, the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eight, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, willfully and knowingly deposit, and cause to be deposited, in the United States Post Office at Omaha, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope, addressed as follows, to-wit: I. J. Warner 2032 Welton St., Denver, Colo," and which said envelope was then and there postmarked "Omaha, Neb. Oct. 25 8:30 A M 1908" and had placed thereon a United States postage stamp of the denomination of two cents, and which said letter, so enclosed and mailed as aforesaid, was then and there in the words and figures following, to wit:

"Absolutely Fire Proff.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, *Oct. 23rd, '08.*

FRIEND KID: Circumstances forced me to either become a partner here or quit. Won't you go into detail by letter. Rice, Ryan
47 and Nolan all here, all wanted in. Enough said, *I'm in.*
Two sales made. Received \$697.50 from one \$566.00 out of other but had to pay \$150.00 out of same. Leaves us the following figures:

697.50
566.00
<hr/>
1,263.50
150.00
<hr/>
2)1,113.50
<hr/>
\$555.70

I will not send you a bit until you write me although no doubt it would be all O. K.

Absolutely Fire Proof.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, —, — — —, — — —.

I am slightly under the impression it will be unlikely that I will be able to place you here especially at present.

This fellow don't need much more money. Seems to be quite a nice fellow with plenty of good ideas and a worker from wire to wire. The newspaper here at The Bluffs had been bad until yesterday. It is O. K. now.

Jacobs come on through with his party. I interviewed him, and that is the last I have seen or heard of them. Will let you know if they return.

Well old Pards hustle around when the time comes

Absolutely Fire Proof.

The Henshaw.

T. J. O'Brien, Prop.

OMAHA, —, — — —, — — —.

get a town and an interviewer, and open Denver preferred Davenport second.

There are several reasons why I think we can make more money by operating that way.

Will write more next time. Man come in.

Your friend and Partner,

Mc.

F. M. CLARK,

Above Hotel."

48 That said letter was then and there of and concerning the aforesaid scheme and artifice to defraud and to effect the object of said conspiracy; all of which the said Frank M. McCall then and there well knew.

Contrary to the form, force and effect of the Statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

CHARLES A. GOSS,

United States Attorney.

49

Second Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that John C. Mabray, otherwise called R. Barrett, Joseph Johnson, J. J. Barrett, A. B. Graft, T. A. Bradley, J. C. Gordon, J. J. Carroll, 66, and B; Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36; R. B. Herriman, first real and true name to the grand jurors unknown, otherwise called George Wilson, George Bennett, James Gates, and 12; E. C. Moore, first real and true name to the grand jurors unknown, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck, and 13; Frank O. Scott, otherwise called George Wilson, George Maxwell, J. W. Maxwell, Floyd Kelly, W. Gilmore, and A; Ed Elliss, first real and true name to the grand jurors unknown, otherwise called Ed. Crawford, and D; Willard Bennett, otherwise called W. Hemmingway, and 114; Frank M. McCall, otherwise called Monte McCall, F. M. Clark, George Guernsey, George Wilson, George Boyle, George Carter and John Knox; James S. Johnson, otherwise called Jay Lovejoy; Isadore J. Warner, otherwise called Doctor James, Kid Warner and 135; W. H. Barton, first real and true name to the grand jurors unknown, otherwise called 129; B. Beamolt, first real and true name to the grand jurors unknown, otherwise called 69; George A. Bradley, otherwise called Geo. Keller and 15; George H. Bradley; J. H. Beath, first real and true name to the grand jurors unknown, otherwise called 51; John Carkeek, otherwise called Jack Carkeek and 60; Fred Cann, first real and true name to the grand jurors unknown, otherwise called 61; Clarence Class; W. I. Crider, first real and true name to the grand jurors unknown, otherwise called 33; Herbert Coon, first real and true name to the grand jurors unknown, otherwise called J. E. Allen and 150; William J. Conners, otherwise called Wm. Carson and 50; W. Richmond; G. H. Verstreten, first real and true name to the grand jurors unknown, otherwise called J. C. Cramer and 2; E. J. Dunn, first real and true name to the grand jurors unknown, otherwise called Ed. J. Davis and 42; Irvie Dunn, otherwise called 14; Tom Davis, first real and true name to the grand jurors unknown, otherwise called 1; John R. Dobbins, otherwise called Beekie Dobbins; Harry Forbes, otherwise called 50; Clarence Forbes, otherwise called 87; W. S. Gibson, first real and true name to the grand jurors unknown, otherwise called G. W. Garden and 49; R. E. L. Goddard, first real and true name to the grand jurors unknown, otherwise called 58; Tom Clay, first real and true name to the grand jurors unknown, otherwise called Thos. Grant and 100; D. E. Griswold, first real and true name to the grand jurors unknown, otherwise called 156; W. A. Garthie, first real and true name to the grand jurors unknown, otherwise called Al. Barney and 86; H. C. Howard, first real and true name to the grand jurors unknown, otherwise called 64; L. E. Hindman, first real and true name to the grand jurors unknown, otherwise called Honey Grove Kid and 71; Win S. Harris, first real and true name to the grand jurors unknown, otherwise called 22; W. D. Godefroy, first real and true name to the grand

jurors unknown, otherwise called 55; Boone B. Jacobs, otherwise called B. B. Davis and 44; Ed. Leach, first real and true name to the grand jurors unknown, otherwise called A. Riley and 18; Leon Lozie, otherwise called D. H. McLeod, Tom Rogers and 21; F. S. Mull, first real and true name to the grand jurors unknown, otherwise called 141; Frank Myers, otherwise called 96; Ed. McCoy, first real and true name to the grand jurors unknown, otherwise called 4; A. V. C. McPherson, first real and true name to the grand jurors unknown, otherwise called Joe Carroll and 22; Eddie K. Morris, first real and true name to the grand jurors unknown, otherwise called 11; 51 Barney Martin, otherwise called 147; J. R. Morrison, first real and true name to the grand jurors unknown; Walter Nolan, otherwise called W. S. Thornton, W. H. Martin and 9; C. F. Philpot, first real and true name to the grand jurors unknown, otherwise called 74; P. A. Pulley, first real and true name to the grand jurors unknown, otherwise called 75; Ernest L. Powers, otherwise called E. L. McCabe; Willard Powell; H. K. Robine, first real and true name to the grand jurors unknown, otherwise called H. K. Jackson and 148; Tom Robison, first real and true name to the grand jurors unknown, otherwise called T. McEnery, T. Castle and 8; George Ryan, otherwise called 63; John C. Smith; Bert R. Shores, first real and true name to the grand jurors unknown, otherwise called Bert Warner, Young Hackensmith and 48; Louis W. Stowe; William Scott, otherwise called 131; Frank Scott; Charles L. Scott, otherwise called C. L. Seaton and 142; Tom Tyner, first real and true name to the grand jurors unknown, otherwise called 113; J. R. Wile, first real and true name to the grand jurors unknown, otherwise called 157; Dick Beatt, first real and true name to the grand jurors unknown, otherwise called Dick Bennett; Ed Leonard, first real and true name to the grand jurors unknown; Joe Acton, first real and true name to the grand jurors unknown; Harry Gorman, otherwise called John Gorman, Harry Price, Harry Wright and A; John Casey, first real and true name to the grand jurors unknown, otherwise called Billy Murphy, Billy Casey, H. Wright; Darby, real and true name to the grand jurors unknown, otherwise called John Carter; John Casey, Jack McCormick, Chubb, real and true name to the grand jurors unknown; J. Fite, real and true name to the grand jurors unknown; Tom Rogers, real and true name to the grand jurors unknown, otherwise called Jack Rogers, Tom Wilson and 10; 52 Jim Griffin, first real and true name to the grand jurors unknown; Hair, real and true name to the grand jurors unknown, otherwise called Jim Barry; Johnnie Murphy, real and true name to the grand jurors unknown, otherwise called H. K.; Charles A. Wilhelm, otherwise called Charles Barrett; Johnnie Murphy, Jack Murphy, Tom Murphy and 102; Ben Marks, first real and true name to the grand jurors unknown, otherwise called 76; William Flemming; D. C. Middleton, first real and true name to the grand jurors unknown; Ed. W. Brown, first real and true name to the grand jurors unknown; Marion C. Barnes, otherwise called Bob Barnes; John Feeney, otherwise called Jack Fenney, George Adams; E. J. Dayton, first real and true name to the grand jurors unknown;

C. C. Barker, first real and true name to the grand jurors unknown; Dave Finley, otherwise called J. Nelson; Orie Fields, otherwise called Lew Holland and 10; all of the above named persons hereafter in this indictment called conspirators, heretofore, to wit, on the first day of April, in the year of our Lord one thousand nine hundred and seven, did then and there unlawfully, willfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby, and with divers other persons to the grand jurors unknown, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress enacted March 2, 1889, entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails"; that is to say, the said conspirators did then and there unlawfully, willfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together and with Ernest Fenby and with said divers other persons to the grand jurors unknown, in devising and intending to devise a scheme and artifice to defraud various persons out of their money and property, to be effected by means of the post office establishment of the United States, and particularly to defraud H. J. Hollister, A. A. Vaneleave, Joseph W. Leisen, F. R. Marts, Dr. C. C. Vanderbeck, Ed. Jones, James Webber, Geo. A. Quinby, C. M. McCain, Max Linderbaum, M. Jackman, J. M. Turner, N. A. Kitchel, Louis Prendell, P. Ellison, Ed. Stenger, W. H. McGrath, Z. Pierpont, John Hermelbrecht, M. Meuer, R. L. King, A. Harrington, C. E. Hayward, Edwin James, F. X. Roethle, Wm. H. Stine, J. C. Bowman, M. S. Mansfield, Joseph P. Walker, R. W. C. Shull, John Corbin, Thomas Cale, George L. Brown, Cecil E. Walker, Adolph Yeske, E. G. Alspaugh, Samuel Sutor, D. C. Harrington, J. E. Harrington, W. H. Bedford, P. W. Whalen, Jas. Servais, Ralph P. Mattingly, Alexander Delain, George F. Castle, Geo. S. Bedford, T. W. Ballew, John Bieger, C. Nelson Pratt, C. A. Nelson, Henry Rushert, Thos. Agern, John Koslek, W. B. Woods, H. Ford, O. L. Cramer, Hans Anderson, R. A. Frazer, J. B. Titterington, A. J. Olson, Frank R. Baker, C. W. Field, Dr. J. C. Parrish, Junior, H. N. Seccrest, A. F. Cook, James Tierney, Wm. Burke, Lee J. Schiff, S. McNairn, N. A. Berthold, W. C. Waegner, Jos. A. Young, E. L. Collins, T. E. George, J. E. Cavanaugh, A. S. Johnson, J. W. Springborn, E. S. Bessey, John H. Sizer, Wm. Dwyer, J. P. Schuermann, C. T. Woods, Eugene Schmitt, Henry Stogsdill, George D. Alberts, and A. E. Pierce, hereinafter in this indictment called victims, and divers other persons to the grand jurors unknown, of their money and property, by the said conspirators then and there agreeing to organize, institute, conduct and manage certain horse races and athletic contests, including prize fights, wrestling matches and foot races, as wagering contests upon which money should be bet, at Council Bluffs, in the State of Iowa, Davenport, in the State of Iowa, Burlington, in the State of Iowa, St. Louis, in the State of Missouri, at Little Rock, in the State of Arkansas, at Denver, in the State of Colorado, at New Orleans, in the State of Louisiana, at Seattle, in the State of

Washington, and divers other places to the grand jurors unknown, which said races were to be conducted in a fraudulent, unfair, and dishonest manner, by some of the said conspirators taking part in said athletic contests as prize fighters, wrestlers and foot races, so that said races and athletic contests were to be managed and controlled solely by the said conspirators, so that they themselves should control the result of such contests and render the out-come certain and known in advance to them, and that no one but said conspirators should take part in riding any of the horses in said races or take part as an athlete in any of said athletic contests, for the purpose and with the intent to defraud the said victims and said divers other persons to the grand jurors unknown, out of their money and property; and the said conspirators were further then and there, and at Omaha, District aforesaid, by the following transactions, and deceitful representations to execute said unlawful scheme and artifice to defraud and to effect the object of said conspiracy, that is to say; that said conspirators then and there agreed to represent to said victims and to said divers other persons to the grand jurors unknown, that some of the conspirators were desirous of procuring persons of financial standing and ability to bet and wager the money of said conspirators for them upon said races and athletic contests, and that said conspirators further were desirous of procuring persons to entrust their money to the said conspirators to bet and wager on said races and athletic contests, or to secure persons to bet their own money for and on behalf of the said conspirators on said races and athletic contests, for which services said persons were to receive and be paid a certain percentage of the money that should be won on said races and athletic contests.

Whereas, in truth and in fact, the said horse races and athletic contests were false, deceitful and fraudulent and so managed and controlled as aforesaid, for the purpose and with the intent of securing said victims and said divers other persons to the grand jurors unknown, to take part therein, as aforesaid, and thereby enable the said conspirators to obtain the possession of the money and property of the said victims and said divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice to defraud, and to effect the object of said conspiracy; all of which the said conspirators then and there well knew.

And the grand jurors aforesaid upon their oaths aforesaid, do further present and say that the said unlawful conspiracy was one growing out of and based upon the existence of the facts and transactions herein set forth and was to be effected and carried out in the manner and by the means and methods herein described, and the said conspirators were further in executing said scheme and artifice to defraud and to effect the object of the said conspiracy, to rent a United States post office box for the delivery of mail, in the United States post office at Omaha, in the State of Nebraska, District aforesaid, at Council Bluffs, in the State of Iowa, at Davenport, in the State of Iowa, at St. Louis, in the State of Missouri, at Denver, in the State of Colorado, at Little Rock, in the State of Arkansas, at New Orleans, in the State of Louisiana, at Los Angeles, in the State

of California, at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown, where any of said conspirators should establish headquarters in furtherance of said scheme and artifice to defraud and to effect the object of said conspiracy, and were to assume and request to be addressed by the number of said post office boxes respectively, and carry on their correspondence with each other, through and by means of the post office establishment of the United States, by the use, as aforesaid, of such assumed title numbers, without the use of their own proper names; and were further then and there in executing said unlawful scheme and artifice to defraud, through and by means of the post office establishment of the United States and to effect the object of said conspiracy, to assume names other than their own proper names and request said victims and said divers other persons to the grand jurors unknown, to address letters by such assumed names to be transmitted through and by means of the post office establishment of the United States to said conspirators; and said conspirators were further in executing said scheme and artifice to defraud, by means of the use and misuse of the said post office establishment of the United States as aforesaid, to take and receive said letters so addressed, from and out of the United States post office at Omaha, in the State and District aforesaid, also at Council Bluffs, in the State of Iowa, also at Davenport, in the State of Iowa, also at St. Louis, in the State of Missouri, also at Denver, in the State of Colorado, also at Little Rock, in the State of Arkansas, also at New Orleans, in the State of Louisiana, also at Los Angeles, in the State of California, also at San Francisco, in the State of California, and in other cities throughout the United States to the grand jurors unknown; said conspirators were further, in pursuance of said unlawful scheme and artifice to defraud, and to effect the object of said conspiracy, to write and send letters and communications through and by means of the post office establishment of the United States by depositing and causing the said letters to be deposited in the United States post office at Omaha, in the District aforesaid, and said other post offices, and other post offices to the grand jurors unknown, which said letters were then and there to be of and concerning and in pursuance of the said scheme and artifice to defraud in this: that said letters and communications so to be written and mailed as aforesaid, were to contain and set forth the deceitful and fraudulent representations and transactions, and were to be of and concerning said scheme and artifice to defraud, and were to be shown by any of the said conspirators so receiving such letters, as aforesaid, to the said victims and said divers other persons to the grand jurors unknown, and read by them, with the intent and for the purpose of inducing the said victims and said divers other persons to the grand jurors unknown, to rely on said false representations and transactions, and turn over to the conspirators large sums of money as aforesaid, to be unlawfully converted by the said conspirators to their own use and gain as aforesaid, and that the said conspirators were then and there further, in pursuance of said scheme and artifice to defraud and to

effect the object of said conspiracy, to use the post office establishment of the United States by opening correspondence with the said victims and said divers other persons to the grand jurors unknown, and inciting and procuring the said victims and the said divers other persons to the grand jurors unknown, to open correspondence as aforesaid, with Frank Sutor, H. N. Harding and divers other persons to the grand jurors unknown, in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that said wicked and corrupt conspiracy, combination, confederation and agreement was originally
58 formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, (the exact place and district whereof is to the grand jurors unknown, and until the 23rd day of February, 1909, continuously and at all times during the four years next preceding the said 23rd day of February, 1909, said wicked and corrupt conspiracy, combination, confederation and agreement was continuously in existence and in the process of execution and operation during and including all of said times, and the said conspirators did knowingly, falsely, wickedly, and corruptly conspire, combine, confederate and agree together and with said divers other persons to the grand jurors unknown, as aforesaid.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that in pursuance of said scheme and artifice to defraud and to effect the object of said conspiracy, combination, confederation and agreement, aforesaid, the said Frank O. Scott, on to wit, the — day of July (the exact date in July being to the grand jurors unknown, wherefore they omit the same from this indictment), in the year of our Lord one thousand nine hundred and eight, at Omaha, in the District of Nebraska, and within the jurisdiction of this Court, did then and there unlawfully, willfully and knowingly deposit and cause to be deposited in the United States post office at Omaha, District aforesaid, for mailing and delivery, a certain letter enclosed in an envelope, addressed to one Frank Fenby, Shepard, Michigan, and which said letter, so enclosed and mailed as aforesaid, was of and concerning the aforesaid scheme and artifice to defraud, and to effect the object of said unlawful conspiracy: all of which the said Frank O. Scott then and there well knew. (The exact terms and language of said letter is to the grand jurors unknown, wherefore they omit a copy of the same from this indictment.)
59 Contrary to the form, force and effect of the Statute of the United States of America in such case made and provided and against the peace and dignity of the said United States.

CHARLES A. GOSS,

United States Attorney,

60 The following persons were duly called and appeared as witnesses before the grand jury in the within case:

W. H. McGrath,
D. L. Weir,

Samuel Sutor,
James Tierney,

C. A. Nelson,
 John Hermelbrecht,
 E. G. Alspaugh,
 W. H. Moore,
 Charles Carrick,
 Lulu Bland,
 Stanley W. Ray,
 C. J. Cate,
 E. D. Sullivan,
 E. C. Smith,
 Valdemar M. Johnson,
 Fred Johnson,
 M. P. Parks,
 Ed Wickham,
 J. K. Cooper,
 J. C. Baker,
 J. E. Cavanaugh,
 J. S. Swenson,
 A. A. Van Cleave,
 J. H. Secrest,
 Z. Pierpont,
 George D. Alberts,
 Henry Stoggsdill,
 Ed Pierce,
 Frank Blank,
 Dr. Frederick H. Hel-
 lingsworth,
 F. R. Martin,
 Jos. H. Leisen,
 Ed Jones,
 James Webber,
 George A. Quinby,
 C. M. McCain,
 Max Lindenbaum,
 M. Jackman,
 N. A. Kitchell,
 Louis Pendell,
 Ed Stenger,
 S. T. Miner,
 E. R. Casteel,
 J. G. Kill,
 F. E. Ray,
 John L. Price,
 M. Mauer,
 A. Harrington,

T. E. George,
 T. W. Ballew,
 C. E. Hayward,
 Edwin James,
 F. X. Routhle,
 Win. H. Stine,
 J. C. Bowman,
 Thomas Cale,
 George L. Brown,
 Cecil E. Walker,
 Adolph Yeske,
 J. E. Harrington,
 D. C. Harrington,
 W. H. Bedford,
 P. W. Whalon,
 Ralph Mattingly,
 George F. Castle,
 George S. Bedford,
 John Bieger,
 C. Nelson Pratt,
 Henry Rushert,
 Thomas Agern,
 John Kezlek,
 J. B. Titterington,
 A. J. Olson,
 U. W. Field,
 Dr. C. Parrish, Jr.,
 William Burke,
 E. L. Collins,
 J. A. Barquist,
 W. H. Dickerson,
 T. H. Irvine,
 B. F. Froman,
 M. Evenburg,
 C. T. Woods,
 Jere Kimmel,
 Wm. Dwyer,
 J. P. Scheuerman,
 A. E. Pierce,
 John H. Sizer,
 Eugene Schmitt,
 W. J. Springhorn,
 S. A. Johnson,
 N. J. Glover,
 Elmer Markley.

Endorsed: Presented in open Court by the Grand Jury and filed
 Oct. 7, 1909. R. C. Hoyt, Clerk. No. 140 Doc. P. United States
 District Court, District of Nebraska, Omaha Division. United
 States v. John C. Mabray, et al. Indictment: Conspiracy
 (see 5440 R. S.) to violate a law of the United States (See
 5480 R. S., as amended by act of Congress of March 2, 1889.) A

True Bill: Franklin F. Haase, Foreman. Chas. A. Goss, U. S. Attorney. S. R. Rush, Spec. Ass't to Att'y Gen. A. W. Lane, Ass't U. S. Attorney. Filed Oct. 7, 1909. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,

District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the United States District Court for the District of Nebraska, do hereby certify the above and foregoing to be a true copy of the indictment and endorsements thereon in case No. 140, Docket P, Criminal, United States of America vs. John C. Mabray et al., as full, true and complete as the original of the same remains on file and of record in this office.

In testimony whereof I have hereunto set my hand and affix the seal of said Court, at Omaha, Nebraska, this 22nd day of October, A. D. 1909.

[CLERK'S SEAL.]

R. C. HOYT,

Clerk of United States District Court,

District of Nebraska.

UNITED STATES OF AMERICA,

District of Nebraska, Omaha Division, ss:

I, Thomas C. Munger, do hereby certify and state that I am one of the Judges of the District Court of the United States, for
62 the District of Nebraska, and that one of the places for holding said Court for said district is at Omaha; I further certify that R. C. Hoyt is clerk of said Court for said entire district; I further certify that the above and foregoing is a true copy of an indictment returned by the grand jury at the present session of Court with the endorsements thereon and is now on file and one of the records of said Court; I further certify that the signature affixed to the foregoing certificate by R. C. Hoyt, is the genuine signature of the said R. C. Hoyt, as Clerk, and that the seal of said Court is affixed to said certificate; I further certify that said certificate is in due form and is in all respects according to law.

Witness my hand at Omaha, Nebraska, this 23rd day of October, A. D. 1909.

THOMAS C. MUNGER,

United States District Judge, District of Nebraska.

UNITED STATES OF AMERICA.

District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, hereby certify that Thomas C. Munger is one of the Judges of said District of Nebraska, and that the signature affixed to the foregoing certificate is the genuine signature of the said Thomas C. Munger as United States District Judge for the District of Nebraska.

Witness my hand and seal of said Court, at Omaha, Nebraska, this 22nd day of October, 1909.

[CLERK'S SEAL.]

R. C. HOYT, *Clerk.*

63

EXHIBIT "D."

UNITED STATES OF AMERICA,

*Northern District of California,**City and County of San Francisco, ss:*

The President of the United States of America to the Marshal of the United States for the Northern District of California, and to his deputies, or any or either of them, Greeting:

Information on oath having this day been laid before me, by Charles S. Ranger, that the crime of violation of Section 5440 of the Revised Statutes of the United States, as alleged in the certified copy of the "Affidavit of Complaint" hereto prefixed and hereby referred to and made a part hereof, has been committed, and accusing R. B. Herriman, Frank W. Brown and E. C. Moore, as stated in said complaint, thereof, you are therefore commanded, in the name of the President of the United States of America, to arrest the above-named R. B. Herriman, Frank W. Brown and E. C. Moore, and take them before me, or the nearest United States Commissioner, or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, that they may then and there be dealt with according to law, for the said offense.

Given under my hand, at my office, in the City and County of San Francisco, in the District aforesaid, this 14th day of October, A. D. 1909.

[COMMISSIONER'S SEAL.]

E. H. HEACOCK,

*United States Commissioner for the Northern**District of California, at San Francisco.*

64

Marshal's Return.

In obedience to the within Warrant, I have the body-s of R. B. Herriman, Frank W. Brown and E. C. Moore before E. H. Heacock U. S. Commissioner, at San Francisco, this 14th day of October 1909.

C. T. ELLIOTT,

U. S. Marshal,

By T. F. KIERMAN,

Deputy Marshal.

I further return that I served the within warrant by arresting the above named R. B. Herriman, Frank W. Brown and E. C. Moore at San Francisco Cal. this 14th day of October 1909.

C. T. ELLIOTT,

U. S. Marshal,

By T. F. KIERMAN,

Office Deputy Marshal.

Endorsed: Marshal's Docket No. 3935. No. 2198. The United States of America vs. R. B. Herriman et al. Warrant of Arrest. Filed Octo. 14th A. D. 1909. E. H. Heacock, U. S. Commissioner for the Northern District of California, at San Francisco.

EXHIBIT "E."

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

The President of the United States of America to the United States Marshal of the Northern District of California and to the Keeper of the Jail of the County of Alameda, State of California, Greeting:

Whereas, R. B. Herriman, Frank W. Brown and E. C. Moore, have been arrested upon the oath of Charles S. Ranger for having on or about the 5th day of April 1907, at Omaha, in the State of Nebraska, in violation of Section 5440 of the Revised Statutes of the United States, unlawfully, wilfully and corruptly conspired, confederated and agreed together and with Ernest Fenby, and with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States Mails, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States, as fully set out in the copy of indictment attached to the affidavit of complaint and Marked "Exhibit "A." on file in the office of the undersigned United States Commissioner, and which copy of indictment is hereby referred to and made a part hereof; and have not been examined by me, E. H. Heacock, a United States commissioner for the Northern District of California, at San Francisco, upon the aforesaid charge, and have been required to give bail in the sum of Fifteen Thousand Dollars each for their appearance before me on the 28th day of October, 1909, at 11 o'clock A. M., on said day, which requisition they have failed to comply with:

Now these are therefore, in the name and by the authority aforesaid to command you, the said Marshal, to commit the said R. B. Herriman, Frank W. Brown and E. C. Moore to the custody of the Keeper of said Jail; and to command you, the Keeper of said Jail, to receive the said R. B. Herriman, Frank W. Brown and E. C. Moore prisoners of the United States of America, into your custody, in said jail, and *him* there safely keep until *he* be discharged by due course of law.

In witness whereof I have hereunto set my hand and official Seal at my office in said District, this 14th day of October 1909.

E. H. HEACOCK,
United States Commissioner as Aforesaid,

Marshal's Return.

Received this Mittimus on Oct. 14, 1909 and on the same day I committed said prisoners to the custody of the Jail Keeper named therein.

C. T. ELLIOTT,

United States Marshal,

By T. F. KIERMAN, *Deputy.*

Dated Oct. 14, 1909.

Endorsed: Marshal's Docket No. 3935. No. 2198. Before E. H. Heacock U. S. Commissioner for the Northern District of California, at San Francisco. United States vs. R. B. Herriman, alias —. Temporary Commitment. Filed Oct. 18, 1909. E. H. Heacock, U. S. Commissioner for the Northern District of California, at San Francisco.

67

EXHIBIT "F."

UNITED STATES OF AMERICA.

Northern District of California, ss:

The President of the United States of America to the Marshal of the Northern District of California and to the Keeper of the Jail of Alameda County, in the State of California, Greeting:

Whereas, R. B. Herriman, Frank W. Brown, and E. C. Moore, have been arrested upon the oath of Charles S. Ranger, for having on or about the 5th day of April, 1907, in violation of Section 5440, of the Revised Statutes of the United States, at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly, conspired, confederated and agreed together and with one Ernest Fenby, and with divers other persons, to commit the acts made offenses and crimes by Section 5480 of the Revised Statutes of the United States, as amended by an Act of Congress entitled, "An Act to punish dealers and pretended dealers in Counterfeit money and other fraudulent devices for using the United States Mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post office Establishment of the United States; and that in pursuance of such conspiracy and to effect the object thereof one John C. Mabry one of such co-conspirators under the assumed name of R. Barrett, on the 5th day of April, 1907, at Omaha, aforesaid, unlawfully, wilfully, and knowingly rented a United States Post office Box for delivery of mail to wit: Box Number 58, in the United States Post

Office at Omaha, aforesaid; all as more fully set out in the copy of indictment attached to the affidavit of complaint and marked "Exhibit A." on file in the office of the Undersigned United States Commissioner, and hereby referred to and made a part hereof:

And after an examination being this day had by me, it appearing to me that said offense had been committed, and probable

cause being shown to believe said R. B. Herriman, Frank W. Brown, and E. C. Moore, committed said offense as charged, I have directed that said R. B. Herriman, Frank W. Brown, and E. C. Moore, be held to bail in the sum of \$15,000.00 each, to appear at the first day of the next term of the District Court of the United States for the District of Nebraska, Omaha, Division, at Omaha, Nebraska, and from time to time thereafter to which the case may be continued and they having failed to give the required bail:

Now these are therefore, in the name and by the authority aforesaid, to command you, the said Marshal, to commit the said R. B. Herriman, Frank W. Brown, and E. C. Moore, to the custody of the keeper of said Jail of the County of Alameda, California, and to leave with said Jailer a certified copy of this writ; and to command you, the Keeper of said Jail of said County, to receive the said R. B. Herriman, Frank W. Brown, and E. C. Moore, prisoners of the United States of America, into your custody, in said Jail and then and there safely to keep until they be discharged by due course of law.

In witness whereof, I have hereunto set my hand and seal at my office in said District this 1st day of November, A. D., 1909.

[SEAL.]

E. H. HEACOCK,
*United States Commissioner for said Northern
District of California at San Francisco.*

69 I, Jas. P. Brown, Clerk of the District Court of the United States *District Court*, for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the Final Mittimus, issued by United States Commissioner E. H. Heacock, and filed in this office in the case of the United States of America vs. R. B. Herriman, et al., No. 4730, now remaining on file and of record in this office.

Attest my hand *the* seal of the said District Court this 29th day of November, A. D. 1909.

[SEAL.]

JAS. P. BROWN, *Clerk*,
By FRANCIS KRULL,
Deputy Clerk.

70

Return.

(To be Made on the Original Writ Only.)

Received this Mittimus with the within named Prisoner, on the First day of November, A. D. 1909, and on the same day, I committed the said Prisoner to the custody of the Jail Keeper named in said Mittimus, with whom I left at the same time a certified copy of this Mittimus.

Dated November 1st, 1909.

C. T. ELLIOTT,
United States Marshal, Northern District of California,
By T. F. KIRNAN,
Office Deputy.

Marshal's Docket No. 3935. No. 2198. E. H. Heacock, United States Commissioner Court. United States of America, vs. R. B. Herriman, et al. Final Mittimus. Issued ———, 19—. Returned and filed ———, 19—. ———, U. S. Commissioner.

71 *Certificate.*

(To be Signed on Copies Only.)

I certify the within to be a true copy of the original writ.

U. S. Marshal, District of ———,
By ———, Deputy.

(Endorsed:) Filed Nov. 29, 1909. Jas. P. Brown, Clerk, by Francis Krull, Deputy Clerk.

72 EXHIBIT "G."

Before E. H. Heacock, United States Commissioner.

No. 2198.

UNITED STATES OF AMERICA, Plaintiff,

vs.

R. B. HERRIMAN, Alias GEORGE WILSON, GEORGE BENNETT, JAMES Gates, and 12; Frank W. Brown, Otherwise Called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin, and 36; E. C. Moore, Otherwise Called E. C. Foster, E. C. Gordon, E. C. Halleck, and 13, Defendants.

MONDAY, November 1st, 1909.

Appearances:

Benjamin McKinley Esq., Asst. U. S. Attorney for the United States.

Louis Oneal Esq., and O. D. Richardson Esq. for the Defendants.

The COMMISSIONER: Proceed.

Mr. McKINLEY: If your Honor please, in this case we now offer in evidence a duly exemplified copy of an indictment returned by the Grand Jury of the United States in the District Court of the United States for the District of Nebraska, Omaha Division, against these defendants and others. I offer that document in evidence (Handing), it being No. 140 Criminal Docket P.

Mr. RICHARDSON: To which we object on behalf of the defendants and each of them upon the following grounds and each of the following grounds:

1. That said indictment shows on its face that the District Court of the United States in and for the Omaha Division, District of Nebraska, has no jurisdiction of the purported crimes set forth in the two counts of said indictment, or either of them.

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because, (1) said counts of said indictment do not allege, nor do either of them allege, that the alleged conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but each of said counts affirmatively alleges that said conspiracies, and each of them, were formed and entered into at a place and district unknown; (2) said counts of said indictment do not allege, and neither of them alleges that the first overt acts alleged to have been done pursuant to said conspiracies, and each of them, were done and committed in the said District of Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown.

That, therefore, the admission of said purported copy of said indictment in evidence against these defendants, or either of them, and any commitment of these defendants, or either of them, based thereon, or based on any count thereof, and any warrant of removal issued thereon, and any removal of these defendants, or either of them, pursuant thereto, and any trial of these defendants, or either of them, upon such indictment, or any count thereof, would be in violation of the rights of the defendants, and each of them, under Clause 3, Section 2 of Article III of the Constitution of the United States, and in violation of the rights of the defendants, and each of them, under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of the rights of these defendants, and each of them, under Article V of the

Articles in Addition to and Amendment of the Constitution
74 of the United States, in this, to-wit, that these defendants are, and each of them is, under and by virtue of the provisions of the Constitution of the United States referred to, entitled to be tried and can only be tried for any alleged offense against the United States in the state and district where the offenses charged in the indictment were committed.

2. That said purported indictment, and each and every count thereof, is defective in substance and does not charge any offense against the United States, in this, to-wit:

A. That the matters contained in the first count of the indictment in manner and form as the same are therein alleged are not sufficient in law.

B. That the matters contained in the second count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

That, therefore, the admission of said exemplified copy of said indictment in evidence would tend to deprive these defendants, and each of them, of their liberty without due process of law and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of Section 1014 of the Revised Statutes of the United States.

3. That said indictment does not, and each and every count thereof, does not, tend to show that there was or is probable cause

for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged therein.

That, therefore, the admission of said exemplified copy of said indictment in evidence would tend to deprive these defendants, and each of them, of their rights under Article VI of the Articles
75 in Addition to and Amendment of the Constitution of the United States.

Therefore, upon all the grounds mentioned, I object to the admission of the exemplified copy of the indictment against these defendants, or any of them, in evidence.

The COMMISSIONER: I will overrule your objection.

Mr. RICHARDSON: We except to your Honor's ruling.

CHARLES S. RANGER, called for the United States, sworn.

Mr. McKINLEY:

Q. Mr. Ranger, where do you reside?

A. In Iowa. Crescent, Iowa, is my home.

Q. What official position do you occupy?

A. Post Office inspector.

Q. You are connected with what division?

A. St. Louis.

The COMMISSIONER:

Q. You reside where?

A. Crescent, Iowa, is my home.

Mr. McKINLEY:

Q. Do you know these defendants before the court?

A. Yes.

Mr. ONEAL: May it please the court, that question being a preliminary one, we ask that it be answered yes or no.

Mr. McKINLEY: He has answered it "yes."

Mr. ONEAL: Mr. Reporter, read the question and the answer that he gave.

(The Reporter reads the question and answer.)

Mr. McKINLEY:

Q. When did you see them, Mr. Ranger?

Mr. RICHARDSON: That is objected to as immaterial, irrelevant and incompetent, not tending to prove the identity of these defendants, or either of them.

76 Mr. McKINLEY: You can't prove it all at once.

The COMMISSIONER: The objection is overruled.

Mr. RICHARDSON: We take an exception.

Mr. McKINLEY:

Q. When did you see them?

A. At San Jose, California.

Q. When?

A. September 30th of this year.

Q. What name was given by R. H. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12? What name did he give to you?

Mr. ONEAL: We object to that as immaterial, irrelevant and incompetent, and as assuming that R. H. Herriman gave those names without any proof therefor.

Mr. McKINLEY: I am not assuming anything. I am asking him what name did he give to him.

Mr. ONEAL: It has not been shown he gave any name.

Mr. McKINLEY:

Q. What name, if any, did he give?

Mr. RICHARDSON: We object to that as immaterial, irrelevant and incompetent and not tending to prove the defendants or either of the defendants.

The COMMISSIONER: I will overrule the objection.

Mr. RICHARDSON: Exception.

A. R. H. Herriman is the name.

Mr. McKINLEY:

Q. What name was given, if any, by E. C. Moore, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13?

Mr. RICHARDSON: Same objection.

The COURT: The same ruling, and your exception.

A. E. C. Moore was the name.

Mr. McKINLEY:

Q. What name, if any, was given by the defendant Frank W. Brown, otherwise called George H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36?

77 Mr. RICHARDSON: The same objection.

The COURT: The same ruling, and your exception.

Mr. RICHARDSON: Exception.

A. F. W. Brown.

Mr. McKINLEY:

Q. He gave you the name F. W. Brown?

A. Yes.

Q. Did they subsequently repeat those names at any other time?

A. Yes.

Q. Before whom and where?

A. Why, at the police station in this city.

Q. Were they asked their names at that time,—their true names?

A. Yes.

Q. And they gave the names that you have given?

A. Yes.

Q. Have they given those names on any other occasion that you know of?

A. At the first Commissioner's hearing.

Q. They gave them here before the United States Commissioner upon their first appearance, did they not,—the same names?

A. Yes.

Q. Answered to those names?

Mr. ONEAL: What is the testimony of the witness; we don't want to be confused with the statement of counsel.

Mr. McKINLEY:

Q. Is that so, that they gave those names?

Mr. ONEAL: We ask that no leading questions be asked of the witness.

The COMMISSIONER:

Q. What names were given?

Mr. McKINLEY:

Q. What names did they give, if any, at that time?

A. Which time do you refer to?

Q. The time before the Commissioner?

A. My recollection is the Commissioner called each name, and they in turn, each one, identified himself as his name was called.

Mr. McKINLEY: That is all.

78 Cross-examination.

Mr. ONEAL:

Q. What do you say the proceedings were before the Commissioner, Mr. Ranger, at the first hearing before his Honor Judge Heacock?

A. I have a recollection of Judge Heacock calling each of the men by name and each one of them answered.

Q. Do you recall under what circumstances that was done?

A. Why, I recall that it was in the other room, and he asked if these parties were present and each one answered "here" or something similar.

Q. They did answer "here." Don't you recall that in truth and in fact the defendants and each of the defendants declined to give his name?

A. No, I do not.

Q. Don't you recall that it was announced in open court by myself that the defendants would stand mute as to their true names?

A. It is my remembrance that that was subsequent to their having already answered.

Q. Now you state it was subsequent to their having answered, do you?

A. Your statement that they would stand mute was subsequent to their having already answered as to their names.

Q. Did Herriman say anything?

A. Nothing further that I remember.

Q. Did he say anything at all, Mr. Ranger, as a matter of fact?
A. He answered to his name, yes.

Q. How? Did he say "I am here" or "that is my name" or

"R. H. Herriman is my name" or anything of that sort?

A. I don't just remember what the form of his reply was.

Q. Did he make any reply at all, as a matter of fact, Mr. Ranger?

A. Yes.

Q. Well, what was his reply? Give it as nearly as you can?

Q. Why, it was ~~his~~ reply acknowledging that he was the party.

Mr. ONEAL: We ask that that be stricken out as the assumption of the witness.

A. I don't remember what his actual words were.

Mr. McKINLEY: Let us have this over and not be technical.

Mr. ONEAL: A man's liberty is at stake here. This is not a technical procedure. We ask that the answer of the witness go out, as to what inference he might have drawn as to anything that was done by any of the defendants.

The COMMISSIONER: Let the witness state what occurred.

Mr. ONEAL:

Q. What was said by Mr. Herriman?

A. I cannot recall the exact words.

Q. What was said—or rather the defendant charged under the name of Herriman—what was said by the defendant charged under the name of Brown?

A. I fail to recall his exact words.

Q. Now, as a matter of fact, don't you know, Mr. Ranger, that none of them said anything?

A. As a matter of fact, it is very clear in my mind that they all answered to their names.

Q. That they answered to their names?

A. Yes.

Q. What did they say in answering to their names?

A. In answer to the judge's question?

Q. Yes, what was said by any one of the defendants?

A. I don't recall the exact words.

Q. Don't you know that in truth and in fact none of them said anything?

A. I have a very clear remembrance that they all answered to their names, as I was particularly interested to see whether they would.

Mr. ONEAL: If your Honor will pardon the question or rather a repetition of the question, your Honor will observe that this witness, for some reason or other, has not thus far given any answer or any purported answer of any one of these defendants—

The COMMISSIONER: Further than to say they answered to their names.

80 Mr. ONEAL: In answering to their names, I would like to know what was said.

The COMMISSIONER: Ask him.

Mr. ONEAL:

Q. What was said?

The COMMISSIONER:

Q. In answering to their names what was said or done.

Mr. McKINLEY: Yes.

Mr. ONEAL: My question was not what was done. It was what was said.

Mr. McKINLEY: It was what was said or done.

The COMMISSIONER: I added that "or done."

Mr. ONEAL: I want to know what was said.

The COMMISSIONER: Ask him your question.

Mr. ONEAL:

Q. What was said?

A. I am unable to state the exact words that each did say.

Q. Did any one of them use any word?

A. I have a very clear recollection that they did.

Q. That they did.

A. Yes.

Q. Is your recollection equally as clear as to what they said or something similar to what they might have said?

A. My recollection is that they all acknowledged in some word their identity, but as to what the exact word was it did not impress my mind strong enough to remember.

Q. Don't you now recall that his Honor, Judge Heacock, asked for the identity of the three defendants and that I announced that at that time they stood mute as to their identity?

A. No, I do not.

Q. That did not transpire then?

A. I remember your remarks to that end, but I have a very clear remembrance,—I think now that your remarks in regard to their standing mute were subsequent to his having called the three names and their having acknowledged their identity.

81 Q. You arrested these three defendants under what names?

A. R. B. Herriman, Frank W. Brown, and E. C. Moore.

Q. You arrested the three defendants under a warrant that I now present to you, did you not?

Mr. McKINLEY: I object to that as immaterial, irrelevant and incompetent under which warrant they arrested them.

The COMMISSIONER: I will overrule the objection.

Mr. McKINLEY: That has not any tendency to prove the identity.

Mr. ONEAL: It would have a tendency to show what transpired at the first hearing.

A. I had a capias.

Q. Where is the capias?

A. That was turned in; that was turned over to the sheriff there, I think, at the time.

Q. And the capias recited what names as being the names of the defendants?

A. R. B. Herriman, F. W. Brown and E. C. Moore.

Q. That was the way the warrants were read to the defendants, were they not?

A. Yes.

Q. The warrant was read to the defendant whom you now designate or attempt to designate as R. B. Herriman—the warrant designating the defendant as R. B. Herriman was read to him?

A. Yes.

The COMMISSIONER: Do you want this marked as an exhibit?

Mr. McKINLEY: It might as well be marked. Before calling this witness I had intended to put something else in the record, but we will now wait until they get through with the witness and then offer it.

Mr. ONEAL: That is all.

Mr. McKINLEY: We will now, before calling the next witness, offer in evidence a *capias* of the United States District Court for the District of Nebraska, Omaha Division,—a certified copy in each case of the *capias*,—against Frank W. Brown, otherwise called 82 F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36. I think that is a sufficient description of it; a certified copy of *capias* against E. C. Moore, otherwise known as E. C. Foster, E. C. Gordon, E. C. Halleck and 13; and a certified copy of a *capias* issued out of the same court—these are all out of the same court—against R. B. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12. Attached to the *capias* in each case is a certified copy of the return of the United States Marshal for the District of Nebraska in each case, certifying and returning the fact that after diligent search he is unable to find each of the parties that I have mentioned within his district. I ask that each of those be also marked.

Mr. RICHARDSON: We object to the admission of these *capiases* and each of them on the grounds heretofore urged in the objection to admission of the exemplified copy of the indictment.

The COMMISSIONER: I will make the same ruling and you can have your exception.

Mr. RICHARDSON: Exception.

JAMES O'CONNELL, called for the United States, sworn.

Mr. McKINLEY:

Q. Mr. O'Connell, you reside in San Francisco?

A. Yes.

Q. What official position do you occupy?

A. Post office Inspector.

Q. You are a Post Office Inspector connected with the office of the Post Office Inspector in charge at San Francisco?

A. Yes.

Q. And you have been such for a number of years past?

A. Yes.

Q. Did you see these defendants or either of them in San Jose,

Santa Clara County, this district, at any time during the month of September of this year?

A. Yes.

83 Q. Were you present at the time that they were taken into custody?

A. I was.

Q. What names, if any, did they give to you, or did **you** ask them their names at that time; let me ask you that.

A. Yes.

Q. You specifically asked them the names of each?

A. Yes.

Q. What name was given by the defendant who is charged as R. B. Herriman, otherwise called George Wilson, George Bennett, James Gates and 12? What did he tell you his name was?

A. The defendant there answered to the name of Herriman; I asked what his name was and he said R. B. Herriman.

Q. What name was given, if any, by the defendant Frank W. Brown, otherwise called F. H. Hamilton, F. H. Potter, J. J. Pomeroy, George H. Adams, F. W. Martin and 36?

A. F. W. Brown.

Q. What name was given at that time and place by the defendant E. C. Moore, otherwise called E. C. Foster, E. C. Gordon, E. C. Halleck and 13?

A. E. C. Moore.

Q. I understand you, Mr. O'Connell, each one of those men specifically gave those particular names in answer to questions asked by you as to their identity?

A. Particularly so in the case of Brown and Moore; Herriman came in afterwards and I asked him if his name was R. B. Herriman and he said it was, but the others was in response to my question as to what their name was.

Q. You asked the question of the defendant Herriman in the form in which you have given it?

A. Yes.

Q. He said that was his name?

A. Yes.

Cross-examination.

Mr. ONEAL:

Q. Mr. O'Connell, where did you say this conversation took place?

A. In the House at 246 Park Avenue, San Jose.

Q. And who was present?

84 A. As to the defendants, Brown and Moore there was a man name- Walter Knox, and there was a woman, and Sheriff Langford of Santa Clara County, and Inspector Allmon, and as to the defendant Herriman those I have named before were present and in addition Mr. Ranger.

Q. What was the first word that was said, the first thing that was said by you to the defendant charged under the name of Herriman?

A. What was the first thing I said to him?

Q. Yes.

A. I don't remember.

Q. Who spoke first, did you or did he?

A. I. He said nothing.

Q. What did you say?

A. I think the first words, I recall, I addressed to him "Is your name Herriman?" and he said yes.

Q. Didn't you say "Hello, Herriman; you are looking fine?"

A. I might have said so.

Q. Don't you know that was what was said?

A. It might have been said, but in addition to that I asked what his name was.

Q. You asked him that in the presence of Sheriff Langford?

A. As near as I can recall. The events were transpiring rather rapidly about that time, and I might be mistaken.

Q. You were all in one room?

A. I might be mistaken as to the woman being present, because she might have been out of the room. I am sure that the men were there.

Q. You are sure that Sheriff Langford was there?

A. Yes; he was there; we took him there.

Q. And in Sheriff Langford's presence you said "what is your name," did you?

Mr. McKINLEY: That is not what he stated.

Mr. ONEAL:

Q. To which he responded "R. B. Herriman?"

A. That is not what I said. I said "Is your name Herriman" and he said "yes."

Q. "Is your name "Herriman" and he said "yes"?

A. Yes.

Q. You are positive of that?

A. Yes.

Q. There could not be any possibility of a mistake about that?

85 A. No, there could not be.

Mr. ONEAL: That is all.

Mr. McKINLEY: That is all.

Mr. McKINLEY: The matter is submitted on behalf of the Government for the present, having made a prima facie showing.

Mr. ONEAL: At this time, incidentally, we want to call your Honor's attention to the transcript of the proceedings had before your Honor on October 14th, already referred to by the witness Ranger, who seems to be somewhat zealous; the defendants, and each of them, on being asked their true names stood mute. I simply call your Honor's attention to that portion of the record.

(After discussion.)

Mr. RICHARDSON: We will move that this proceeding be dismissed, if the court please, on the ground, first, that there is no

competent or sufficient evidence of the identity of these defendants or either of them; secondly, upon the ground that the evidence admitted does not show that the District Court of the United States, in and for the Omaha Division, District of Nebraska, has any jurisdiction of the purported crimes set forth in the two counts of the exemplified copy of the indictment admitted in evidence, or either of them, because (A) said counts of said indictment do not allege, nor does either of them allege, that the alleged conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska, or the State of Nebraska, but each of said counts affirmatively alleges that said conspiracies, and each of them, were formed and entered into at a place and district unknown; (B) that said counts of said exemplified copy of said indictment do not allege, and neither of them alleges, that

86 the first overt acts alleged to have been done pursuant to said conspiracies purported to be set forth therein, and each of them, were done and committed in the said District of Nebraska, or said State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said conspiracies, and each of them, were done and committed at a place and district unknown. That, therefore, any order committing these defendants, or either of them, upon the evidence so far adduced in this proceeding, and any warrant of removal issued thereon, and any removal of these defendants, or either of them, pursuant thereto, and any trial of these defendants, or either of them, upon such indictment, or any count thereof, would be in violation of the rights of these defendants, and each of them, under Clause 3, Section 2 of Article III of the Constitution of the United States, and in violation of the rights of the defendants, and each of them, under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of the rights of these defendants, and each of them, under Article V of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to-wit, that these defendants are, and each of them is, under and by virtue of the provisions of the Constitution of the United States referred to, entitled to be tried and can only be tried for any alleged offense against the United States in the state and district where the offenses charged in the indictment were committed.

2. That said purported exemplified copy of said indictment, introduced in evidence, and each and every count thereof, is defective in substance and does not charge any offense against the United States, in this, to-wit:

A. That the matters contained in the first count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

87 B. That the matters contained in the second count of said indictment in manner and form as the same are therein alleged are not sufficient in law.

That, therefore, any commitment based upon the evidence introduced in this proceeding, and upon the exemplified copy of said indictment, tends and will tend to deprive these defendants, and

each of them, of their liberty without due process of law and in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, and in violation of Section 1014 of the Revised Statutes of the United States.

3. That the indictment introduced in evidence does not, and each and every count thereof does not, tend to show that there was or is probable cause for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged therein, nor does the evidence introduced at this proceeding tend to show that there was or is probable cause for believing these defendants, or either of them, guilty of the offenses, or any offense, purported to be charged in said indictment.

That, therefore, any commitment of these defendants, or either of them, would and will tend to deprive these defendants, and each of them, or their rights under Article VI of the Articles in Addition to and Amendment of the Constitution of the United States.

Upon all these grounds we move for a dismissal of this proceeding and for the discharge of the defendants.

The COMMISSIONER: I overrule the motion.

Mr. RICHARDSON: Exception.

Mr. ONEAL: We would like to announce at this time that insofar as further proceedings before the Commissioner are concerned, we have no evidence to present on behalf of the defendants.

88 The COMMISSIONER: Is the matter submitted by the defendants?

Mr. McKINLEY: The matter is submitted by the Government.

Mr. ONEAL: The matter is submitted on the part of the defendants.

The COMMISSIONER: I hold the defendants, and each of them, for trial before the District Court of the United States for the District of Nebraska, Omaha Division, and fix the bail of each at \$15,000, and in default of such bail I remand them to the custody of the United States Marshal for this District to await such order in regard to their removal as may be made on application therefor by the United States Attorney to the District Judge of this District.

Mr. RICHARDSON: We except to your Honor's ruling.

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EXHIBIT "H."

Capias.

UNITED STATES OF AMERICA,

*District of Nebraska,**Omaha Division. ss:*

The President of the United States of America to the Marshal of the District of Nebraska, Greeting:

You are hereby commanded that you take E. C. Moore, otherwise known as E. C. Foster, E. C. Gordon, E. C. Hallock, if he shall be found in your District, and him safely keep, so that you may have

him bodily in the District Court of the United States of America, for the District of Nebraska, to be held at Omaha, in said District, before the Judge of the said Court, forthwith, to answer unto the United States of America, on an Indictment for Conspiracy, contrary to the laws of the United States.

Hereof fail not, and have you then and there this Writ with your doings thereon.

Witness, The Honorable Thomas C. Munger, Judge of the District Court of the United States, for the District of Nebraska, at Omaha, this 7th day of October, 1909.

R. C. HOYT, *Clerk.*

By ———, *Deputy.*

Endorsed: Filed Oct. 8, 1909. R. C. Hoyt, Clerk.

(Reverse:) Marshal's No. — No. 140 P. United States District Court, District of Nebraska, Omaha Division, United States of America, vs. John C. Mabray, E. C. Moore, et al. Capias. Marshal's Costs. Service, \$—; Mileage, \$—; Expenses, (in lieu of mileage) \$—; Total, \$—.

(Attached to Foregoing.)

Form No. 465.

DISTRICT OF NEBRASKA, ss.:

I hereby certify and return, that on the 8th day of October, 1909, I received the within Capias and that after diligent search, I am unable to find the within named defendants E. C. Moore, within my district.

WM. P. WARNER,

United States Marshal,

By J. B. NICKERSON,

Deputy United States Marshal.

7-466.

(Also Attached to Foregoing:)

UNITED STATES OF AMERICA,

District of Nebraska,

Omaha Division:

I, R. C. Hoyt, Clerk of the United States District Court for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original thereof, which original is now in my custody as such Clerk. Said cause is still pending and undetermined in said Court.

Witness my hand as clerk, and the seal of said Court, at Omaha, Nebraska, this 8th day of October, 1909.

[SEAL.]

R. C. HOYT, *Clerk.*

By ———, *Deputy.*

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EXHIBIT "I."

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 29th day of November, in the year of our Lord, one thousand nine hundred and nine.

Present: The Honorable John J. De Haven, Judge.

No. 4730.

UNITED STATES OF AMERICA

vs.

R. B. HERRIMAN, FRANK W. BROWN, and E. C. MOORE.

Now comes the United States Marshal for the Northern District of California, and produced before the Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California, the bodies of R. B. Herriman, Frank W. Brown and E. C. Moore. And it appearing that the said R. B. Herriman, Frank W. Brown, and E. C. Moore have been duly committed by E. H. Heacock, United States Commissioner for the Northern District of California, in default of bail in the sum of Fifteen Thousand dollars each, for trial before the District Court of the United States for the District of Nebraska, Omaha Division at Omaha, Nebraska, upon the charge of having, on or about the 5th day of April, 1907, in violation of Section 5440 of the Revised Statutes of the United States at Omaha, State of Nebraska, unlawfully, wilfully, and corruptly conspired, confederated and agreed together and with one Ernest Fenby, and with divers other persons,

to commit the acts made offenses and crimes by Section 5440
92 of the Revised Statutes, as amended by an Act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States Mails," enacted March 2, 1889, in devising a scheme and artifice to defraud various persons to be effected by means of the Post Office Establishment of the United States:

On motion of Benj. L. McKinley, Ass't U. S. Att'y, and in default of bail in the sum of fifteen thousand dollars each, and after hearing Owen D. Richardson, Esqr., attorney for said defendants, in opposition thereto, it is by the Court ordered that the United States Marshal for the Northern District of California, surrender and deliver the said R. B. Herriman, Frank W. Brown, and E. C. Moore, to the United States Marshal for the District of Nebraska, Omaha Division, at Omaha, Nebraska, to be by him produced before the United States Court as by law has cognizance of the offense, to be taken and dealt with according to law. Further ordered that a warrant of removal in due form issue forthwith. Further ordered that execution of said warrant of removal be, and the same is hereby stayed for a period of three days from this date.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the above entitled case.

Attest my hand and seal of said District Court this 29th day of Nov. A. D., 1909.

[SEAL.]

JAS. P. BROWN, *Clerk*,
By FRANCIS KRULL,
Deputy Clerk.

Endorsed: Filed Dec. 1, 1909. Southard Hoffman, Clerk, By W. B. Maling, Deputy Clerk.

93 At a stated term, to wit: the November term A. D. 1909 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court Room in the City and County of San Francisco, on Monday the 6th day of December in the year of our Lord one thousand nine hundred and nine.

Present: The Honorable William C. Van Fleet, District Judge.

No. 15004.

In the Matter of the Application of E. C. MOORE for the Writ of Habeas Corpus.

Order Denying and Dismissing Petition.

Petitioner's application for the writs of habeas corpus and certiorari heretofore submitted being now fully considered, and the Court having rendered its oral opinion, it was ordered, in accordance therewith, that said application be and the same is hereby denied and that said petition be and the same is hereby dismissed.

94 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

E. C. MOORE, Appellant.

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Notice of Appeal.

To the Appellees Above Named:

Please take notice that E. C. Moore, the petitioner above named, hereby appeals to the Supreme Court of the United States

from the final order made and entered on the 6th day of December, 1909, by the Honorable W. C. Van Fleet, District Judge presiding in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, denying his application for writs of habeas corpus and certiorari, and from each and every part of said order.

95 Dated at the City and County of San Francisco, State of California, on the 7th day of December, 1909.

Respectfully,

LOUIS ONEAL AND
OWEN D. RICHARDSON,
Attorneys for Petitioner.

Endorsed: Filed Dec. 7 1909. Southard Hoffman, Clerk, by W. B. Maling, Deputy Clerk.

96 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

E. C. MOORE, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Petition of Appeal.

The petition of the above-named petitioner, E. C. Moore, for an order allowing appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

E. C. Moore, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this case, on the 6th day of December, A. D., 1909, whereby it was ordered that his application for a writ of habeas corpus directed to C. T. Elliott, United States Marshal in and for the

97 Northern District of California, requiring the said Marshal to bring and have your petitioner before this Court and his application for a writ of certiorari directed to Honorable E. H. Heacock, United States Commissioner for the Northern District of California, and to James P. Brown, Clerk of the District Court for the Northern District of California, commanding them to return all proceedings, complaint, warrants, and record of all proceedings against your petitioner to the Circuit Court of the United States forthwith for such action as might be proper in the premises, be and the same were thereby denied;

Now come Louis Oneal and Owen D. Richardson, his attorneys and counsel, praying this Court for an order allowing your said petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that there are grave doubts as to whether the proceedings referred to in the petition for writs of habeas corpus and certiorari have not infringed the constitutional rights of your petitioner, and that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law, and that the said United States Commissioner before whom your said petitioner was arraigned, as set forth in the said petition hereinabove referred to, had no jurisdiction either to require bail of your said petitioner or to commit your said petitioner in default thereof, and that your petitioner desires in good faith to submit the constitutional questions, and other questions involved, to the Supreme Court of the United States for their determination.

Your petitioner will ever pray.

E. C. MOORE.

98 UNITED STATES OF AMERICA,
Northern District of California, ss:

E. C. Moore, being duly sworn, on his oath deposes and says: that he is the petitioner above named; that the foregoing petition is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

E. C. MOORE.

Subscribed and sworn to before me this 7th day of December, 1909.

[SEAL.]

J. B. LANKTREE,

*Notary Public in and for the County of Alameda,
State of California.*

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

99 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

E. C. MOORE, Appellant,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Assignment of Errors.

The petition of E. C. Moore, by Louis Oneal and Owen D. Richardson, his counsel, in connection with his petition of appeal herein entered *herein* to the Supreme Court of the United States from an order made and entered in the United States Circuit Court of the Ninth Judicial Circuit in and for the Northern District of California denying the writs of habeas corpus and certiorari, and makes and files the following assignment of errors:

1. The Court erred in denying the petitioner's writs of habeas corpus and certiorari and remanding him to the custody
100 of the United States Marshal.
2. In refusing to grant said writs.
3. In refusing to discharge said petitioner.
4. In holding that the restraint of petitioner's liberty is legal.
5. In holding that the restraint of your petitioner is not a violation of his substantial rights.
6. In holding that said alleged indictment, or any count thereof, stated an offense against the laws of the United States.
7. In holding that the alleged indictment was sufficient upon which to base a warrant of removal.
8. In holding that there was sufficient evidence of probable cause.
9. In holding that the warrant of removal made by the United States District Judge for the Northern District of California was issued upon the finding of probable cause.
10. In failing to hold that the restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in that this petitioner is entitled to be tried for said alleged offenses set forth in said indictment, and each of them, in the State and District where said alleged crimes, and each of them, have been committed, which district shall have been previously ascertained by law.
11. In holding that a warrant of removal should issue, for the reason that the proceedings conclusively show that the venue for the

facts alleged in the indictment is not in the District and State of Nebraska.

101 12. In failing to hold that the restraint of your petitioner is in violation of Articles V and VI of the Articles in Addition to and Amendment of the Constitution of the United States, and each of them, in that said indictment, and each of the counts thereof, do not charge this petitioner with any crime against the United States and show no violation by petitioner of Section 5440 of the Revised Statutes of the United States, or any other statutes of the United States, but show affirmatively that no offense has been committed by petitioner against the laws of the United States.

13. In failing to hold that the restraint of your petitioner is in violation of Article V of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: the said indictment, and each of the counts thereof, affirmatively allege and show that the conspiracies set forth therein, and each of them, were formed and entered into more than three years prior to the finding of said indictment, and that the first overt acts committed pursuant to said conspiracies, and each of them, were committed more than three years prior to the finding of said indictment; and in this, to wit: said indictment does not allege that this petitioner consciously participated in any overt act done or committed pursuant to said conspiracies, or either of them, within a period of three years next preceding the finding of said indictment; and that, therefore, the restraint of your petitioner deprives him of his liberty without due process of law and in violation of his rights under Section 1014 and 1044 of the Revised Statutes of the United States.

102 14. In failing to hold that the restraint of your petitioner is in violation of Clause 3, Section 2, Article III of the Constitution of the United States and of Article VI of the Articles in Addition to and Amendment of the Constitution of the United States, in this, to wit: that the said indictment introduced in evidence and the evidence introduced before said United States Commissioner and said District Judge does not show that there is any probable cause for believing this petitioner to have committed the alleged offenses charged in said indictment, or either of them, in said District and State of Nebraska.

15. In holding that your petitioner was in the custody of the said C. T. Elliott, United States Marshal in and for the Northern District of California, and deprived of his liberty by him by due process of law.

16. For other errors appearing on the record, by reason whereof the petitioner prays that the said order dismissing the said writ of habeas corpus be reversed and the prisoner discharged from custody.

Dated December 7th, 1909.

LOUIS ONEAL AND
OWEN D. RICHARDSON,
Attorneys and Counsellors for E. C. Moore.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

103 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

E. C. MOORE, Appellant,

VS.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Order Allowing Appeal from Order Denying Writs of Habeas Corpus and Certiorari.

The said E. C. Moore, the above named petitioner, by and through his attorneys, Louis Oneal and Owen D. Richardson, Esq., having giving notice of an appeal to the Supreme Court of the United States from the order heretofore made by the above Court on December 6, 1909, denying the application of said petitioner for Writ of Habeas Corpus and Certiorari and dismissing said petition, and in that behalf having presented his petition for an order allowing such appeal, together with an assignment of the
104 errors to be urged by him upon said appeal,

It is ordered that said petitioner be and he hereby is allowed to prosecute an appeal to the Supreme Court of the United States from the said order denying his said petition for Writ of Habeas Corpus and Certiorari; that the amount of the bond for costs to be executed and filed by said petitioner upon his said appeal be and hereby is fixed at the sum of Five hundred dollars (\$500.00); that upon the approval and filing of such bond a citation in due form issue herein, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

Dated December 7, 1909.

WM. C. VAN FLEET,

*United States District Judge, Presiding
in the Circuit Court.*

Endorsed: Filed Dec. 7, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.

105 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Application of E. C. MOORE for Writs of Habeas Corpus and Certiorari.

E. C. MOORE, Appellant.

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Appellees.

Bond for Costs on Appeal.

Know all men by these presents, that we, E. C. Moore, as principal, and Jos. M. Plunkett and P. J. Sullivan, as Sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred (500.00) dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated the 7th day of December, 1909.

106 Whereas, lately to wit: on the 6th day of December, 1909, at the Circuit Court of the United States in and for the Ninth Judicial Circuit, Northern District of California, in a proceeding therein pending, an order was entered denying the application of the above named petitioner for writs of habeas corpus and certiorari, and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Circuit Court to review the same,

Now, the condition of the above obligation is such, that if the said petitioner, E. C. Moore, shall prosecute said appeal to effect, and shall answer all costs if he shall fail to make said appeal good, then this obligation to be void else to remain in full force and effect.

E. C. MOORE. [SEAL.]

JOS. M. PLUNKETT. [SEAL.]

P. J. SULLIVAN. [SEAL.]

Sealed and delivered and taken and acknowledged this 7th day of December, 1909, before me

[SEAL.]

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court.

107 UNITED STATES OF AMERICA,
Northern District of California, ss:

Jos. M. Plunkett and P. J. Sullivan each being duly sworn, for himself says, that he is worth more than the sum of \$500.00 over and above all his just debts and liabilities.

JOS. M. PLUNKETT.
 P. J. SULLIVAN.

Sworn to before me this 7 day of December, 1909.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court.

Approved as to form, amount and sufficiency this 7th day of December, A. D. 1909.

WM. C. VAN FLEET,
U. S. Dist. Judge.

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

108 In the Circuit Court of the United States, Ninth Judicial
 Circuit, Northern District of California.

In the Matter of the Application of E. C. MOORE for Writs of
 Habeas Corpus and Certiorari.

E. C. MOORE, Appellant.

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District
 of California; James P. Brown, Clerk of the District Court of the
 United States, Northern District of California, and E. H. Heacock,
 United States Commissioner for the Northern District of Cali-
 fornia, Appellees.

Admission of Service of Citation on Appeal.

Service of a copy of the citation on appeal in the above entitled
 matter is hereby acknowledged this 7th day of Dec'r, 1909.

C. T. ELLIOTT,
*United States Marshal in and for Northern
 District of California.*

JAS. P. BROWN,
*Clerk of the District Court of the United States,
 Northern District of California.*

E. H. HEACOCK,
*United States Commissioner for the Northern
 District of California.*

Endorsed: Filed December 7th, 1909. Southard Hoffman, Clerk.

109 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District
of California.

Clerk's Office.

No. 15004.

E. C. MOORE, Appellant,

vs.

C. T. ELLIOTT, United States Marshal, et al., Appellees.

Præcipe for Certified Copy of Record and Proceedings.

To the Clerk of said Court.

SIR: Please prepare certified transcript of proceedings in the above
cause, including therein the following:

Petition for writs of habeas corpus & certiorari; order denying
writs & dismissing petition; notice of appeal; petition of appeal;
assignment of errors; order allowing appeal; bond for costs on
appeal; admission of service of citation; also all other papers prop-
erly a part of said record and proceedings.

Dated Dec. 7, 1909.

LOUIS ONEAL AND

OWEN D. RICHARDSON,

Attorneys and Counsellors for Appellant.

Endorsed: Filed Dec. 7, 1909. Southard Hoffman, Clerk, by
J. A. Schaertzer, Deputy Clerk.

110 In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California,

No. 15004.

In the Matter of the Application of E. C. MOORE for Writs of
Habeas Corpus and Certiorari.

Certificate to Transcript of Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United
States of America, of the Ninth Judicial Circuit, in and for the
Northern District of California, do hereby certify the foregoing one
hundred and nine (109) pages numbered 1 to 109, inclusive, to be
a full, true and correct copy of the record and proceedings in the
above entitled matter, and that the same constitute the record on
appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record
on appeal is \$63.30; that said amount was paid by Louis Oneal and
Owen D. Richardson, Esqs., attorneys for petitioner and that the
original citation issued in said matter is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 17th day of January, A. D. 1910.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
Clerk of United States Circuit Court, Ninth Judicial
Circuit, Northern District of California.

111

Citation.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to C. T. Elliott, United States Marshal in and for the Northern District of California; James P. Brown, Clerk of the District Court of the United States, Northern District of California, and E. H. Heacock, United States Commissioner for the Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Ninth Judicial Circuit, Northern District of California, and entered in the Clerk's office of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, on the 7th day of December, A. D. 1909, in a cause where Frank W. Brown is appellant and you are appellees, to show cause, if any, why the order made and entered, denying the application of said appellant for writs of habeas corpus and certiorari and dismissing the petition of said appellant therefor as in the said order allowing an appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. C. Van Fleet, District Judge, presiding in the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, this 7th day of December, A. D. 1909.

WM. C. VAN FLEET, *Judge.*

112 Service of the within Citation by copy admitted this 30 day of Dec., 1909.

ROBT. T. DEVLIN,
United States Attorney for Northern District of California.

113 [Endorsed:] No. 15004. United States Circuit Court, Ninth Circuit, Northern District of California. In the Matter of the Application of E. C. Moore for writs of habeas corpus and certiorari, E. C. Moore, Appellant, vs. C. T. Elliott, United States Marshal, et al., Appellees. Citation. Filed Dec. 30, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. Louis Oneal and Owen D. Richardson, Attorneys and Counselors for appellant, Bank of San Jose Bldg., San Jose, Calif.

Endorsed on cover: File No. 22,004. N. California C. C. U. S. Term No. 428. E. C. Moore, appellant, vs. C. T. Elliott, United States marshal in and for the northern district of California, et al. Filed February 2d, 1910. File No. 22,004.

U.S. Supreme Court
FILED
MAR 3 1909
AMES P. HATNEY
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. ~~428~~ 200

RUSSELL B. HERRIMAN, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of His Appeal.**

ARTHUR A. BIRNEY
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 776.

RUSSELL B. HERRIMAN, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of the Appeal.**

And now comes the above named appellant, Russell B. Herriman, by Arthur A. Birney and Henry F. Woodard, his attorneys, and moves the court for an order admitting the said Russell B. Herriman, appellant, to bail pending the determination of the appeal of the said appellant in this court, in the sum of six thousand dollars, or such other sum as shall to the court seem proper, with sufficient sureties, conditioned according to law and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.

Notice of Motion.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term.

RUSSELL B. HERRIMAN, Appellant,	}	No. 776.
<i>vs.</i>		
UNITED STATES OF AMERICA, Appellee.		

The Honorable Attorney-General of the United States:

You will please take notice that the appellant in the above entitled cause will, on the 7th day of March, 1910, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the court-room of the Supreme Court of the United States in the Capitol, in the city of Washington, District of Columbia, move the said Supreme Court for an order admitting the said Russell B. Herriman, appellant, to bail pending the determination of the proceedings on appeal to said Supreme Court, in the sum of \$6,000 or such other sum as shall to said court seem proper, with sufficient sureties, conditioned according to law, and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division.

Said motion will be made and based upon this notice, the annexed affidavit, and annexed order of Honorable Thomas C. Munger, Judge United States District Court, District of Nebraska, as well also upon the record, files, proceedings, and papers in this cause.

ARTHUR A. BIRNEY,

HENRY F. WOODARD,

Attorneys for Appellant.

MARCH 2, 1910.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1909.

RUSSELL B. HERRIMAN, Appellant,	}	No. 776, October Term.
<i>vs.</i>		
UNITED STATES OF AMERICA, Appellee.	}	

In the matter of the application of the above named appellant for admission to bail pending his appeal.

Russell B. Herriman, appellant in the above entitled cause, respectfully represents to the court as follows:

First. That, as by the record of this cause will appear, he is imprisoned and restrained of his liberty by C. T. Elliott, United States Marshal for the Northern District of California, in the city of Oakland, County of Alameda, State of California, under color of authority of the laws of the United States and by virtue of a warrant of removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, signed by Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California, on November 29, 1909, and directing the removal of this appellant to the District of Nebraska, Omaha Division, and his delivery to the United States Marshal for said district and division, to be by him produced before the United States court for trial upon an indictment found by the grand jury of the United States for the said District of Nebraska, Omaha Division.

Second. That after the said orders of commitment and removal, this appellant presented his petition to the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California, for writs of habeas corpus and certiorari, but said court by its order dated December 6, 1909, denied the same; and from said order this appellant

prayed an appeal to this court, which appeal was, on December 7, 1909, duly allowed; and on the same day this appellant executed, with sureties, and filed his bond for costs on such appeal and the transcript of said record has been duly lodged in this court.

Third. That thereafter said cause came again before the United States District Court for the District of Nebraska, upon an application of this petitioner to be admitted to bail, and thereupon the court passed an order fixing the bail for this appellant at the sum of \$6,000, as will more fully appear by the duly certified copy of said order hereto attached, but so it is that your petitioner being advised that under the law his custody by said United States Marshal may not be disturbed pending his appeal except by order of this court, such bail has not been given and he remains in the custody of the United States Marshal.

Fourth. This appellant further shows that the offense alleged against him by the indictment aforesaid, so found by the grand jury for the District of Nebraska, Omaha Division, is the violation of section 5440 of the Revised Statutes of the United States by having conspired, etc., with one Ernest Fenby and divers other persons to commit the acts made crimes and offenses by section 5480 of the Revised Statutes of the United States as amended by an act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money, and other fraudulent devices for using the United States mails," approved March 2, 1889, in devising a scheme to defraud various persons, to be effected by means of the Post Office Establishment of the United States. Said indictment is at great length but in substance charges that this appellant and others did conspire to cheat and defraud divers persons through the device of agreements to organize and conduct horse races and athletic contests to be held in divers cities of

the United States, therein set forth, which races and contests were to be conducted in a fraudulent manner, and by falsely representing that the said conspirators were of large means and could and would control the results of said races and contests, whereby the said persons were to be induced to bet their money upon the said contests, and were thereafter by other devices defrauded of the same (as will at large appear in the transcript of record here filed), and that the conspirators to carry out said scheme were to rent post-office boxes in different postoffices of the United States and to transmit letters through the mails.

Appellant further shows that in neither of the counts of the said indictment is it averred that the said conspiracy was entered into at any time in the District of Nebraska, but it is averred that it was—

“originally formed and entered into by the said conspirators during the year 1965, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown.”

This appellant is advised by counsel and so avers that his arrest and detention are illegal, and in violation of the Constitution of the United States, and particularly of clause 3, section 2, Article III thereof, and of Article VI of the Amendments thereto, in this, to wit: The said indictment by color, whereof your petitioner is held in imprisonment, as aforesaid, shows that the District Court of the United States, for the District of Nebraska, has no jurisdiction of the alleged offenses set out in said indictment; that the said indictment in neither of its counts avers that the conspiracy set forth therein was formed or entered into in the said District of Nebraska or the State of Nebraska, but, on the contrary alleges in each count as hereinbefore shown, that the conspiracy therein

alleged was entered into at a place and district unknown; and for that said indictment does not allege nor does either of the counts thereof allege that the first overt acts alleged to have been committed, were committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that such first overt acts were committed at a place and district unknown.

Your petitioner is also advised and will so contend before this court, that the said indictment and each of the counts thereof does not charge this petitioner with a crime against the United States; and further that said indictment and each count thereof shows affirmatively that the conspiracy therein alleged is barred from prosecution by lapse of time, and the operation of the statute of limitations applicable thereto; and further that the evidence introduced before the United States Commissioner and before the United States District Judge does not show that there is probable cause for believing this appellant to have committed the alleged offenses in the District of Nebraska or State of Nebraska.

Fifth. Your petitioner further shows and avers that he was, for the period of about one year prior to his said imprisonment, a resident of the said State of California and of said Northern District of California.

That there is no probability that he will, in any case, avoid his bail or make default in appearance, and, in that behalf your petitioner shows and avers as follows: That his general reputation for truth, honesty, integrity, was, at all times prior to said imprisonment, good; that he is informed and believes that there was not presented to the grand jury that found said indictment any substantial evidence showing or tending to show that he was or is guilty of the alleged offenses, or any of them, attempted to be charged in said indictment; that by reason of his financial condition he will be compelled to pledge substantially all of his property and

money to secure the sureties on any bail bond that may be required of him.

Your petitioner further shows and avers that the said United States Court of the District of Nebraska, Omaha Division, did by its order duly made on or about October 7, 1909, fix the bail of your petitioner at the sum of fifteen thousand dollars, and that thereafter, to wit, on or about January 6, 1910, the said court reduced the bail of your petitioner to six thousand dollars as hereinbefore averred, and that said reduction was made by and with the consent of the attorneys for the United States duly expressed in open court in that behalf.

The premises considered, this appellant respectfully prays that he may be admitted to bail pending the determination of his appeal by this court in the sum of six thousand dollars or such other sum as shall to the court seem proper.

RUSSELL B. HERRIMAN.

State of California, County of Alameda: Personally appeared before me, a notary public in and for the County and State aforesaid, Russell B. Herriman, who being duly sworn deposes and says that he has heard read the foregoing petition and that the statements therein contained are true as he verily believes.

Witness my hand and notarial seal this 19th day of February, 1910.

EARL D. WHITE,
Notary Public.

[Copy.]

UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA.

September, 1909, Term, Omaha, Nebraska.

Saturday Morning: January 15, 1910.

Court opened pursuant to adjournment.

Present: Thomas C. Munger, Judge.

The following, among other proceedings, were had and done, to wit:

UNITED STATES OF AMERICA	}	Order reducing bonds.
140P		
vs.		
JOHN C. MABRAY ET AL.		

Now, on this day, this matter came on for hearing, and the United States Attorney consenting, the court doth **Order** that the defendants, E. C. Moore, R. B. Herriman, and Frank W. Brown, be admitted to bail, with surety to be approved by the clerk of this court, the said bonds conditioned as required by law, in the penalty of the sums, as follows, to wit:

The said defendant, R. B. Herriman, in the sum of \$6,000.

The said defendants, E. C. Moore and Frank W. Brown, in the sum of \$3,000 each.

The orders heretofore made with reference to the bonds of said defendants are modified to the extent that the same shall be in harmony with the order now here made.

THOS. C. MUNGER, *Judge*.

Endorsed: Filed Jan. 15, 1910. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,	}	ss:
DISTRICT OF NEBRASKA,		
Omaha Division.		

I, R. C. Hoyt, clerk of the District Court of the United States, for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the Journal of the proceedings of said court in the above entitled action as the same appears of record in my office.

Witness my hand and the seal of said court, at Omaha, in said district, this 18th day of January, A. D. 1910.

[SEAL.]

R. C. HOYT, *Clerk*.

17
Office Supreme Court U. S.

FILED

MAR 3 1910

JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. ~~427~~ 201

FRANK W. BROWN, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of His Appeal.**

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.



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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 777.

FRANK W. BROWN, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of the Appeal.**

And now comes the above named appellant, Frank W. Brown, by Arthur A. Birney and Henry F. Woodard, his attorneys, and moves the court for an order admitting the said Frank W. Brown, appellant, to bail pending the determination of the appeal of the said appellant in this court, in the sum of three thousand dollars, or such other sum as shall to the court seem proper, with sufficient sureties, conditioned according to law and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.

Notice of Motion.

IN THE SUPREME COURT OF THE UNITED STATES,
October Term.

FRANK W. BROWN, Appellant,	} No. 777.
<i>vs.</i>	
UNITED STATES OF AMERICA, Appellee.	

The Honorable Attorney-General of the United States:

You will please take notice that the appellant in the above entitled cause will, on the 7th day of March, 1910, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the court-room of the Supreme Court of the United States in the Capitol, in the city of Washington, District of Columbia, move the said Supreme Court for an order admitting the said Frank W. Brown, appellant, to bail pending the determination of the proceedings on appeal to said Supreme Court, in the sum of \$3,000 or such other sum as shall to said court seem proper, with sufficient sureties, conditioned according to law, and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division.

Said motion will be made and based upon this notice, the annexed affidavit, and annexed order of Honorable Thomas C. Munger, Judge United States District Court, District of Nebraska, as well also upon the record, files, proceedings, and papers in this cause.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant.

MARCH 2, 1910.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1909.

FRANK W. BROWN, Appellant,	{	No. 777, October Term.
vs. UNITED STATES OF AMERICA, Appellee.		

In the matter of the application of the above named appellant for admission to bail pending his appeal.

Frank W. Brown, appellant in the above entitled cause, respectfully represents to the court as follows:

First. That, as by the record of this cause will appear, he is imprisoned and restrained of his liberty by C. T. Elliott, United States Marshal for the Northern District of California, in the city of Oakland, County of Alameda, State of California, under color of authority of the laws of the United States and by virtue of a warrant of removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, signed by Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California, on November 29, 1909, and directing the removal of this appellant to the District of Nebraska, Omaha Division, and his delivery to the United States Marshal for said district and division, to be by him produced before the United States court for trial upon an indictment found by the grand jury of the United States for the said District of Nebraska, Omaha Division.

Second. That after the said orders of commitment and removal, this appellant presented his petition to the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California, for writs of habeas corpus and certiorari but said court by its order dated December 6, 1909, denied the same; and from said order this appellant

prayed an appeal to this court, which appeal was, on December 7, 1909, duly allowed; and on the same day this appellant executed, with sureties, and filed his bond for costs on such appeal and the transcript of said record has been duly lodged in this court.

Third. That thereafter said cause came again before the United States District Court for the District of Nebraska, upon an application of this petitioner to be admitted to bail, and thereupon the court passed an order fixing the bail for this appellant at the sum of \$3,000, as will more fully appear by the duly certified copy of said order hereto attached, but so it is that your petitioner being advised that under the law his custody by said United States Marshal may not be disturbed pending his appeal except by order of this court, such bail has not been given and he remains in the custody of the United States Marshal.

Fourth. This appellant further shows that the offense alleged against him by the indictment aforesaid, so found by the grand jury for the District of Nebraska, Omaha Division, is the violation of section 5440 of the Revised Statutes of the United States by having conspired, etc., with one Ernest Fenby and divers other persons to commit the acts made crimes and offenses by section 5480 of the Revised Statutes of the United States as amended by an act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money, and other fraudulent devices for using the United States mails," approved March 2, 1889, in devising a scheme to defraud various persons, to be effected by means of the Post Office Establishment of the United States. Said indictment is at great length but in substance charges that this appellant and others did conspire to cheat and defraud divers persons through the device of agreements to organize and conduct horse races and athletic contests to be held in divers cities of

the United States, therein set forth, which races and contests were to be conducted in a fraudulent manner, and by falsely representing that the said conspirators were of large means and could and would control the results of said races and contests, whereby the said persons were to be induced to bet their money upon the said contests, and were thereafter by other devices defrauded of the same (as will at large appear in the transcript of record here filed), and that the conspirators to carry out said scheme were to rent post-office boxes in different postoffices of the United States and to transmit letters through the mails.

Appellant further shows that in neither of the counts of the said indictment is it averred that the said conspiracy was entered into at any time in the District of Nebraska, but it is averred that it was—

“originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown.”

This appellant is advised by counsel and so avers that his arrest and detention are illegal, and in violation of the Constitution of the United States, and particularly of clause 3, section 2, Article III thereof, and of Article VI of the Amendments thereto, in this, to wit: The said indictment by color, whereof your petitioner is held in imprisonment, as aforesaid, shows that the District Court of the United States, for the District of Nebraska, has no jurisdiction of the alleged offenses set out in said indictment; that the said indictment in neither of its counts avers that the conspiracy set forth therein was formed or entered into in the said District of Nebraska or the State of Nebraska, but, on the contrary alleges in each count as hereinbefore shown, that the conspiracy therein

alleged was entered into at a place and district unknown: and for that said indictment does not allege nor does either of the counts thereof allege that the first overt acts alleged to have been committed, were committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that such first overt acts were committed at a place and district unknown.

Your petitioner is also advised and will so contend before this court, that the said indictment and each of the counts thereof does not charge this petitioner with a crime against the United States; and further that said indictment and each count thereof shows affirmatively that the conspiracy therein alleged is barred from prosecution by lapse of time, and the operation of the statute of limitations applicable thereto; and further that the evidence introduced before the United States Commissioner and before the United States District Judge does not show that there is probable cause for believing this appellant to have committed the alleged offenses in the District of Nebraska or State of Nebraska.

Fifth. Your petitioner further shows and avers that he was, for the period of about one year prior to his said imprisonment, a resident of the said State of California and of said Northern District of California.

That there is no probability that he will, in any case, avoid his bail or make default in appearance, and, in that behalf your petitioner shows and avers as follows: That his general reputation for truth, honesty, and integrity, was, at all times prior to said imprisonment, good; that he is informed and believes that there was not presented to the grand jury that found said indictment any substantial evidence showing or tending to show that he was or is guilty of the alleged offenses, or any of them, attempted to be charged in said indictment; that by reason of his financial condition he will be compelled to pledge substantially all of his property and

money to secure the sureties on any bail bond that may be required of him.

Your petitioner further shows and avers that the said United States Court of the District of Nebraska, Omaha Division, did by its order duly made on or about October 7, 1909, fix the bail of your petitioner at the sum of fifteen thousand dollars, and that thereafter, to wit, on or about January 6, 1910, the said court reduced the bail of your petitioner to three thousand dollars as hereinbefore averred, and that said reduction was made by and with the consent of the attorneys for the United States duly expressed in open court in that behalf.

The premises considered, this appellant respectfully prays that he may be admitted to bail pending the determination of his appeal by this court in the sum of three thousand dollars or such other sum as shall to the court seem proper.

FRANK W. BROWN.

State of California, County of Alameda: Personally appeared before me, a notary public in and for the County and State aforesaid, Frank W. Brown, who being duly sworn deposes and says that he has heard read the foregoing petition and that the statements therein contained are true as he verily believes.

Witness my hand and notarial seal this 19th day of February, 1910.

[SEAL.]

EARL D. WHITE,
Notary Public.

[Copy.]

UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA.

September, 1909, Term, Omaha, Nebraska.

Saturday Morning: January 15, 1910.

Court opened pursuant to adjournment.

Present: Thomas C. Munger, Judge.

The following, among other proceedings, were had and done, to wit:

UNITED STATES OF AMERICA	}	Order reducing bonds.
140P vs.		
JOHN C. MABRAY ET AL.		

Now, on this day, this matter came on for hearing, and the United States Attorney consenting, the court doth

Order that the defendants, E. C. Moore, R. B. Herriman, and Frank W. Brown, be admitted to bail, with surety to be approved by the clerk of this court, the said bonds conditioned as required by law, in the penalty of the sums, as follows, to wit:

The said defendant, R. B. Herriman, in the sum of \$6,000.

The said defendants, E. C. Moore and Frank W. Brown, in the sum of \$3,000 each.

The orders heretofore made with reference to the bonds of said defendants are modified to the extent that the same shall be in harmony with the order now here made.

THOS. C. MUNGER, *Judge.*

Endorsed: Filed Jan. 15, 1910. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,	}	ss:
DISTRICT OF NEBRASKA,		
Omaha Division.		

I, R. C. Hoyt, clerk of the District Court of the United States, for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the Journal of the proceedings of said court in the above entitled action as the same appears of record in my office.

Witness my hand and the seal of said court, at Omaha, in said district, this 18th day of January, A. D. 1910.

[SEAL.]

R. C. HOYT, *Clerk.*

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Office Supreme Court U. S.

FILED

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JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. ~~428~~ 202

E. C. MOORE, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of His Appeal.**

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.



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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 778.

E. C. MOORE, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of the Appeal.**

And now comes the above named appellant, E. C. Moore, by Arthur A. Birney and Henry F. Woodard, his attorneys, and moves the court for an order admitting the said E. C. Moore, appellant, to bail pending the determination of the appeal of the said appellant in this court, in the sum of three thousand dollars, or such other sum as shall to the court seem proper, with sufficient sureties, conditioned according to law and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division,

ARTHUR A. BIRNEY,

HENRY F. WOODARD,

Attorneys for Appellant,

Washington, D. C.

Notice of Motion.

IN THE SUPREME COURT OF THE UNITED STATES,
October Term.

E. C. MOORE, Appellant,	} No. 778.
<i>vs.</i>	
UNITED STATES OF AMERICA, Appellee.	

The Honorable Attorney-General of the United States:

You will please take notice that the appellant in the above entitled cause will, on the 7th day of March, 1910, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the court-room of the Supreme Court of the United States in the Capitol, in the city of Washington, District of Columbia, move the said Supreme Court for an order admitting the said E. C. Moore, appellant, to bail pending the determination of the proceedings on appeal to said Supreme Court, in the sum of \$3,000 or such other sum as shall to said court seem proper, with sufficient sureties, conditioned according to law, and subject to the approval of a district or circuit judge of the United States for the District of Nebraska, Omaha Division.

Said motion will be made and based upon this notice, the annexed affidavit, and annexed order of Honorable Thomas C. Munger, Judge United States District Court, District of Nebraska, as well also upon the record, files, proceedings, and papers in this cause.

ARTHUR A. BIRNEY,

HENRY F. WOODARD,

Attorneys for Appellant.

MARCH 2, 1910.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1909.

E. C. MOORE, Appellant,	{	No. 778, October Term.
<i>vs.</i>		
UNITED STATES OF AMERICA, Appellee.	}	

In the matter of the application of the above named appellant for admission to bail pending his appeal.

E. C. Moore, appellant in the above entitled cause, respectfully represents to the court as follows:

First. That, as by the record of this cause will appear, he is imprisoned and restrained of his liberty by C. T. Elliott, United States Marshal for the Northern District of California, in the city of Oakland, County of Alameda, State of California, under color of authority of the laws of the United States and by virtue of a warrant of removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, signed by Honorable John J. De Haven, Judge of the District Court of the United States for the Northern District of California, on November 29, 1909, and directing the removal of this appellant to the District of Nebraska, Omaha Division, and his delivery to the United States Marshal for said district and division, to be by him produced before the United States court for trial upon an indictment found by the grand jury of the United States for the said District of Nebraska, Omaha Division.

Second. That after the said orders of commitment and removal, this appellant presented his petition to the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California, for writs of habeas corpus and certiorari but said court by its order dated December 6, 1909, denied the same; and from said order this appellant

prayed an appeal to this court, which appeal was, on December 7, 1909, duly allowed; and on the same day this appellant executed, with sureties, and filed his bond for costs on such appeal and the transcript of said record has been duly lodged in this court.

Third. That thereafter said cause came again before the United States District Court for the District of Nebraska, upon an application of this petitioner to be admitted to bail, and thereupon the court passed an order fixing the bail for this appellant at the sum of \$3,000, as will more fully appear by the duly certified copy of said order hereto attached, but so it is that your petitioner being advised that under the law his custody by said United States Marshal may not be disturbed pending his appeal except by order of this court, such bail has not been given and he remains in the custody of the United States Marshal.

Fourth. This appellant further shows that the offense alleged against him by the indictment aforesaid, so found by the grand jury for the District of Nebraska, Omaha Division, is the violation of section 5440 of the Revised Statutes of the United States by having conspired, etc., with one Ernest Fenby and divers other persons to commit the acts made crimes and offenses by section 5480 of the Revised Statutes of the United States as amended by an act of Congress entitled "An Act to punish dealers and pretended dealers in counterfeit money, and other fraudulent devices for using the United States mails," approved March 2, 1889, in devising a scheme to defraud various persons, to be effected by means of the Post Office Establishment of the United States. Said indictment is at great length but in substance charges that this appellant and others did conspire to cheat and defraud divers persons through the device of agreements to organize and conduct horse races and athletic contests to be held in divers cities of

the United States, therein set forth, which races and contests were to be conducted in a fraudulent manner, and by falsely representing that the said conspirators were of large means and could and would control the results of said races and contests, whereby the said persons were to be induced to bet their money upon the said contests, and were thereafter by other devices defrauded of the same (as will at large appear in the transcript of record here filed), and that the conspirators to carry out said scheme were to rent post-office boxes in different postoffices of the United States and to transmit letters through the mails.

Appellant further shows that in neither of the counts of the said indictment is it averred that the said conspiracy was entered into at any time in the District of Nebraska, but it is averred that it was—

“originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown.”

This appellant is advised by counsel and so avers that his arrest and detention are illegal, and in violation of the Constitution of the United States, and particularly of clause 3, section 2, Article III thereof, and of Article VI of the Amendments thereto, in this, to wit: The said indictment by color, whereof your petitioner is held in imprisonment, as aforesaid, shows that the District Court of the United States, for the District of Nebraska, has no jurisdiction of the alleged offenses set out in said indictment; that the said indictment in neither of its counts avers that the conspiracy set forth therein was formed or entered into in the said District of Nebraska or the State of Nebraska, but, on the contrary alleges in each count as hereinbefore shown, that the conspiracy therein

alleged was entered into at a place and district unknown; and for that said indictment does not allege nor does either of the counts thereof allege that the first overt acts alleged to have been committed, were committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that such first overt acts were committed at a place and district unknown.

Your petitioner is also advised and will so contend before this court, that the said indictment and each of the counts thereof does not charge this petitioner with a crime against the United States; and further that said indictment and each count thereof shows affirmatively that the conspiracy therein alleged is barred from prosecution by lapse of time, and the operation of the statute of limitations applicable thereto; and further that the evidence introduced before the United States Commissioner and before the United States District Judge does not show that there is probable cause for believing this appellant to have committed the alleged offenses in the District of Nebraska or State of Nebraska.

Fifth. Your petitioner further shows and avers that he was, for the period of about one year prior to his said imprisonment, a resident of the said State of California and of said Northern District of California.

That there is no probability that he will, in any case, avoid his bail or make default in appearance, and, in that behalf your petitioner shows and avers as follows: That his general reputation for truth, honesty, and integrity, was, at all times prior to said imprisonment, good; that he is informed and believes that there was not presented to the grand jury that found said indictment any substantial evidence showing or tending to show that he was or is guilty of the alleged offenses, or any of them, attempted to be charged in said indictment; that by reason of his financial condition he will be compelled to pledge substantially all of his property and

money to secure the sureties on any bail bond that may be required of him.

Your petitioner further shows and avers that the said United States Court of the District of Nebraska, Omaha Division, did by its order duly made on or about October 7, 1909, fix the bail of your petitioner at the sum of fifteen thousand dollars, and that thereafter, to wit, on or about January 6, 1910, the said court reduced the bail of your petitioner to three thousand dollars as hereinbefore averred, and that said reduction was made by and with the consent of the attorneys for the United States duly expressed in open court in that behalf.

The premises considered, this appellant respectfully prays that he may be admitted to bail pending the determination of his appeal by this court in the sum of three thousand dollars or such other sum as shall to the court seem proper.

E. C. MOORE.

State of California, County of Alameda: Personally appeared before me, a notary public in and for the County and State aforesaid, E. C. Moore, who being duly sworn deposes and says that he has heard read the foregoing petition and that the statements therein contained are true as he verily believes.

Witness my hand and notarial seal this 19th day of February, 1910.

[SEAL.]

EARL D. WHITE,
Notary Public.

[Copy.]

UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA.

September, 1909, Term, Omaha, Nebraska.

Saturday Morning: January 15, 1910.

Court opened pursuant to adjournment.

Present: Thomas C. Munger, Judge.

The following, among other proceedings, were had and done, to wit:

UNITED STATES OF AMERICA	}	Order reducing bonds.
140P <i>vs.</i>		
JOHN C. MABRAY ET AL.		

Now, on this day, this matter came on for hearing, and the United States Attorney consenting, the court doth

Order that the defendants, E. C. Moore, R. B. Herriman, and Frank W. Brown, be admitted to bail, with surety to be approved by the clerk of this court, the said bonds conditioned as required by law, in the penalty of the sums, as follows, to wit:

The said defendant, R. B. Herriman, in the sum of \$6,000.

The said defendants, E. C. Moore and Frank W. Brown, in the sum of \$3,000 each.

The orders heretofore made with reference to the bonds of said defendants are modified to the extent that the same shall be in harmony with the order now here made.

THOS. C. MUNGER, *Judge.*

Endorsed: Filed Jan. 15, 1910. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,	}	<i>ss:</i>
DISTRICT OF NEBRASKA,		
Omaha Division.		

I, R. C. Hoyt, clerk of the District Court of the United States, for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the Journal of the proceedings of said court in the above entitled action as the same appears of record in my office.

Witness my hand and the seal of said court, at Omaha, in said district, this 18th day of January, A. D. 1910.

[SEAL.]

R. C. HOYT, *Clerk.*

ARTHUR A. BERRY
CLINT F. BROWN
Bureau of Agriculture
Washington, D. C.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 777.

FRANK W. BROWN, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

**Motion for Admission of Appellant to Bail
Pending the Determination of the Appeal.**

And now comes the above named appellant, Frank W. Brown, by Arthur A. Birney and Henry F. Woodard, his attorneys, and moves the court for an order admitting the said Frank W. Brown, appellant, to bail pending the determination of the appeal of the said appellant in this court, in the sum of \$3,000, or such other sum as shall to the court seem proper, with sufficient sureties, conditioned according to law and subject to the approval of a district or circuit judge of the United States for the Northern District of California, for the reason, among others, that said Frank W. Brown is in a precarious condition of health, as will appear by the annexed certificate.

ARTHUR A. BIRNEY,

HENRY F. WOODARD,

Attorneys for Appellant,

Washington, D. C.

7-08-5m

Frank Barnett
SheriffDr. C. E. Curdts
Jail PhysicianP. L. White
Chief JailorC. K. Clark
J. D. Moffitt
G. G. Robinson
H. Woodley
Assistant JailersOffice of
ALAMEDA COUNTY JAIL

OAKLAND, CAL., April 25th, 1910.

This is to certify that one Frank W. Brown, a United States prisoner confined in the Alameda County Jail, has been under my care and treatment for the past five months for attacks of acute inflammatory rheumatism.

During most of this time he has been confined to his bed and the last attack he has had has been more severe than ever.

His heart is much enlarged and its action is very weak.

His general condition is very poor and he shows the bad effects of confinement more and more each day.

In my opinion much longer confinement would mean permanent injury to his health as his disease does not seem to respond to treatment and he seems to be gradually growing worse.

C. E. CURDTS,
Regular Physician to Alameda County Jail.

Subscribed and sworn to before me this 26th day of April, 1910.

[SEAL.]

J. B. LANKTREE,
*Notary Public in and for the County of
Alameda, State of California.*

My commission expires February 5th, 1913.

STATE OF CALIFORNIA, {
County of Alameda, { *ss:*

On this 26th day of April, in the year of our Lord, One thousand nine hundred and ten, before me, J. B. Lanktree, a notary public, in and for said County and

State, residing therein, duly commissioned and sworn, personally appeared C. E. Curdts, regular physician to Alameda County Jail, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the County and State aforesaid, the day and year in this certificate first above written.

[SEAL.]

J. B. LANKTREE,

*Notary Public in and for the County of
Alameda, State of California.*

(General)

STATE OF CALIFORNIA, }
County of Alameda, } ss:

I, John P. Cook, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that J. B. Lanktree whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a notary public in and for said County, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such notary public.

And I do further certify that I am well acquainted with the handwriting of the said notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand

and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 27th day of April, A. D. 1910.

[SEAL.]

JOHN P. COOK,

*County Clerk and Clerk of the Superior
Court of Alameda County.*

By.....Deputy Clerk.

Notice of Motion.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term.

FRANK W. BROWN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

} No. 777.

The Honorable Attorney-General of the United States:

You will please take notice that the appellant in the above entitled cause will, on the 16th day of May, 1910, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the court-room of the Supreme Court of the United States in the Capitol, in the city of Washington, District of Columbia, move the said Supreme Court for an order admitting the said Frank W. Brown, appellant, to bail pending the determination of the proceedings on appeal to said Supreme Court, in the sum of \$3,000 or such other sum as shall to said court seem proper, with sufficient sureties, conditioned according to law, and subject to the approval of a district or circuit judge of the United States for the Northern District of California.

Said motion will be based upon the notice, the affidavit of Dr. C. E. Curdts, and the remaining record, files, proceedings, and papers in this cause.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Petitioner.

MAY 9, 1910.

IN THE SUPREME COURT OF THE UNITED STATES,
October Term, 1909.

FRANK W. BROWN, Appellant,	{	No. 777, October Term.
vs.		
UNITED STATES OF AMERICA, Appellee.		

In the matter of the application of the above named appellant for admission to bail pending his appeal.

Frank W. Brown, appellant in the above entitled cause, respectfully represents to the court as follows:

First. That, as by the record of this cause will appear, he is imprisoned and restrained of his liberty by C. T. Elliott, United States marshal for the Northern District of California, in the city of Oakland, county of Alameda, State of California, under color of authority of the laws of the United States and by virtue of a warrant of removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, signed by Hon. John J. De Haven, judge of the District Court of the United States for the Northern District of California, on November 29, 1909, and directing the removal of this appellant to the District of Nebraska, Omaha Division, and his delivery to the United States marshal for said district and division, to be by him produced before the

United States court for trial upon an indictment found by the grand jury of the United States for the said District of Nebraska, Omaha Division.

Second. That after the said orders of commitment and removal, this appellant presented his petition to the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California, for writs of habeas corpus and certiorari but said court by its order dated December 6, 1909, denied the same; and from said order this appellant prayed an appeal to this court, which appeal was, on December 7, 1909, duly allowed; and on the same day this appellant executed, with sureties, and filed his bond for costs on such appeal and the transcript of said record has been duly lodged in this court.

Third. That thereafter said cause came again before the United States District Court for the District of Nebraska, upon an application of this petitioner to be admitted to bail, and thereupon the court passed an order fixing the bail for this appellant at the sum of \$3,000, as will more fully appear by the duly certified copy of said order hereto attached, but so it is that your petitioner being advised that under the law his custody by said United States marshal may not be disturbed pending his appeal except by order of this court, such bail has not been given and he remains in the custody of the United States marshal.

Fourth. This appellant further shows that the offense alleged against him by the indictment aforesaid, so found by the grand jury for the District of Nebraska, Omaha Division, is the violation of section 5440 of the Revised Statutes of the United States, by having conspired, etc., with one Ernest Fenby and divers other persons to commit the acts made crimes and offenses by section 5480 of the Revised Statutes of the United States, as amended by an act of Congress entitled "An Act to punish dealers

and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," approved March 2, 1889, in devising a scheme to defraud various persons, to be effected by means of the Post Office Establishment of the United States. Said indictment is at great length, but in substance charges that this appellant and others did conspire to cheat and defraud divers persons through the device of agreements to organize and conduct horse races and athletic contests to be held in divers cities of the United States therein set forth, which races and contests were to be conducted in a fraudulent manner, and by falsely representing that the said conspirators were of large means and could and would control the results of said races and contests, whereby the said persons were to be induced to bet their money upon the said contests, and were thereafter by other devices defrauded of the same (as will at large appear in the transcript of record here filed), and that the conspirators to carry out said scheme were to rent post office boxes in different post offices of the United States and to transmit letters through the mails.

Appellant further shows that in neither of the counts of the said indictment is it averred that the said conspiracy was entered into at any time in the District of Nebraska, but it is averred that it was—

"originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown."

This appellant is advised by counsel and so avers that his arrest and detention are illegal, and in violation of the Constitution of the United States, and particularly of clause 3, section 2, Article III thereof, and of Article

VI of the amendments thereto, in this, to wit: The said indictment by color, whereof your petitioner is held in imprisonment, as aforesaid, shows that the District Court of the United States, for the District of Nebraska, has no jurisdiction of the alleged offenses set out in said indictment; that the said indictment in neither of its counts avers that the conspiracy set forth therein was formed or entered into in the said District of Nebraska or the State of Nebraska, but, on the contrary alleges in each count as hereinbefore shown, that the conspiracy therein alleged was entered into at a place and district unknown; and for that said indictment does not allege nor does either of the counts thereof allege that the first overt acts alleged to have been committed, were committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that such first overt acts were committed at a place and district unknown.

Your petitioner is also advised and will so contend before this court, that the said indictment and each of the counts thereof does not charge this petitioner with a crime against the United States; and further that said indictment and each count thereof shows affirmatively that the conspiracy therein alleged is barred from prosecution by lapse of time, and the operation of the statute of limitations applicable thereto; and further that the evidence introduced before the United States commissioner and before the United States district judge does not show that there is probable cause for believing this appellant to have committed the alleged offenses in the district of Nebraska or State of Nebraska.

Fifth. Your petitioner further shows and avers that his health and physical condition is such that his continued imprisonment will probably result fatally, or at least endanger his life, or be ultimately dangerous thereto, and, in that behalf, there is hereto attached the affidavit of one C. E. Curdts, who is a duly licensed medical prac-

tioner located in the City of Oakland, County of Alameda, State of California, describing the health and physical condition of your petitioner. Your petitioner is also advised that the hearing of his said appeal herein can not be had before this court until after the commencement of the October term of the year 1910. Your petitioner therefore shows and avers that unless he is admitted to bail pending such appeal the continued imprisonment until his said appeal is held will, in all probability, result fatally, or will, at least, endanger his life or be ultimately dangerous thereto.

The premises considered, this appellant respectfully prays that he may be admitted to bail pending the determination of his appeal by this court in the sum of three thousand dollars or such other sum as shall to the court seem proper.

FRANK W. BROWN.

STATE OF CALIFORNIA, {
County of Alameda, { ss:

Personally appeared before me, a notary public in and for the county and State aforesaid, Frank W. Brown, who being duly sworn deposes and says that he has heard read the foregoing petition and that the statements therein contained are true as he verily believes.

Witness my hand and notarial seal this 30th day of April, 1910.

J. B. LANKTREE,
Notary Public.

STATE OF CALIFORNIA, {
County of Alameda, { ss:

I, John P. Cook, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that J. B. Lanktree whose name is sub-

scribed to the certificate of proof or acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a notary public in and for said county, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such notary public.

And I do further certify that I am well acquainted with the handwriting of the said notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 30th day of April, A. D. 1910.

[SEAL.]

JOHN P. COOK,
County Clerk and Clerk of the Superior
Court of Alameda County.
By.....*Deputy Clerk.*

(Copy.)

UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA.

September, 1909, Term, Omaha, Nebraska.

Saturday morning: January 15, 1910.

Court opened pursuant to adjournment.

Present: Thomas C. Munger, judge.

The following, among other proceedings, were had and done, to wit:

UNITED STATES OF AMERICA

140P vs.

JOHN C. MABRAY ET AL.

Order Reducing Bonds.

Now, on this day, this matter came on for hearing, and the United States attorney consenting, the court doth

Order that the defendants, E. C. Moore, R. B. Herriman, and Frank W. Brown, be admitted to bail, with surety to be approved by the clerk of this court, the said bonds conditioned as required by law, in the penalty of the sums, as follows, to wit:

The said defendant, R. B. Herriman, in the sum of \$6,000.

The said defendants, E. C. Moore and Frank W. Brown, in the sum of \$3,000 each.

The orders heretofore made with reference to the bonds of said defendants are modified to the extent that the same shall be in harmony with the order now here made.

THOS. C. MUNGER, *Judge.*

Endorsed: Filed Jan. 15, 1910. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,
District of Nebraska, { ss:
Omaha Division,

I, R. C. Hoyt, clerk of the District Court of the United States for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the journal of the proceedings of said court in the above entitled action as the same appears of record in my office.

Witness my hand and seal of said court, at Omaha, in said district, this 18th day of January, A. D. 1910.

[SEAL.]

R. C. HOYT, *Clerk.*

Affidavit Accompanying Petition to be Admitted to Bail.

UNITED STATES OF AMERICA, }
State of California, } ss:
County of Alameda, }

C. E. Curdts, being first duly sworn, deposes and says:

I am a regularly licensed and practicing physician and I reside at No. 742 53d street, in the city of Oakland, County of Alameda, State of California.

I have been in regular attendance upon Frank W. Brown, the petitioner for bail herein, for the past five months, during his incarceration in the Alameda County Jail.

During said period said Frank W. Brown has been under my professional care for attacks of acute inflammatory rheumatism. During most of this time he has been confined to his bed and the last attack he has had has been more severe than any previous attack.

His heart is much enlarged and its action is very weak. His general condition is very poor and he shows the bad effects of confinement more and more each day. In my opinion, much longer confinement would mean permanent injury to his health as his disease does not seem to respond to treatment and he seems to be gradually growing worse. I am also of opinion that his confinement for the ensuing six months might result in fatally or, at least, be ultimately dangerous to his health by greatly aggravating his disease.

C. E. CURDTS, *M. D.*

Subscribed and sworn to before me this 30th day of April, A. D. 1910.

J. B. LANKTREE,
Notary Public in and for the County of
Alameda, State of California.

NIGHT LETTER

THE WESTERN UNION TELEGRAPH COMPANY

RECEIVED AT

625 ch bj e 104 paid "night letter" 11 ex'a
Oakland, Calif., May 13--14, '10. -3:30a-
Birney & Woodard, Atty's. at Law,
Washington, D. C.

We, the undersigned jailers are in constant touch with Frank W. Brown, government prisoner, confined in the Alameda County jail, at Oakland, California. He suffers with rheumatism, accompanied with large swelling of joints and severe pain. He has had half dozen such attacks, while here, each lasting from one to four weeks, during them he is helpless and has to be assisted when necessary to leave his bed. He does not sleep and appears to suffer greatly. He is very weak, losing weight continually and has every appearance of a very sick man.

J. D. MOFFITT.
CHAS. K. CLARK.
J. W. SOARES.
ROBERT JOHNSON.
GEORGE G. BOISSON.

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NIGHT LETTER

THE WESTERN UNION TELEGRAPH COMPANY

RECEIVED AT

606 ch bj rg 74 Paid NL 6 extra

Okland Calif May 14

Birney and Woodard, Attys at Law,
Washington, D. C.

In my conversation with Doctor Sandern regarding condition of Frank W Brown he stated that he could not take into consideration past attacks of acute inflammatory rheumatism which have been numerous and severe he said he found his heart very much enlarged and its pulsations rapid and weak also muscles were very sensitive I have examined Brown today and there is no sign of improvement in his condition

C E CURDTS Regular attending physician
Alameda County Jail

I am

17
Office Supreme Court U. S.
FILED
MAR 11 1910
JAMES H. McKENNEY
Clerk.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. ~~426~~ 200

RUSSEL B. HERRIMAN, APPELLANT,

vs.

THE UNITED STATES.

No. ~~427~~ 201

FRANK W. BROWN, APPELLANT,

vs.

THE UNITED STATES.

No. ~~428~~ 202

R. C. MOORE, APPELLANT,

vs.

THE UNITED STATES.

On Appeal from the Circuit Court of the United States,
Northern District of California.

Brief in Reply on Motion to Admit to Bail.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellants.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 776.

RUSSEL B. HERRIMAN, APPELLANT,
vs.
THE UNITED STATES.

No. 777.

FRANK W. BROWN, APPELLANT,
vs.
THE UNITED STATES.

No. 778.

R. C. MOORE, APPELLANT,
vs.
THE UNITED STATES.

On Appeal from the Circuit Court of the United States,
Northern District of California.

Brief in Reply on Motion to Admit to Bail.

The Charge of Bad Faith.

Although the brief of Solicitor-General declares that local (Washington, D. C.) counsel are not included in his charge of deception (p. 7), we wish to inform the court that we have no knowledge whatever of the proceedings in the courts in California except what the

record discloses. Immediately upon receipt of the brief of counsel for the United States (Thursday, March 10th), we telegraphed counsel in San Francisco as follows:

"Attorney-General claims Judge De Haven's order fixing bail was under agreement in open court not further to contend against removal. How is this?"

And have received the following reply by telegraph:

"SAN JOSE, CALIFORNIA, *March 10.*

"BIRNEY & WOODARD,
Washington, D. C.:

"No such agreement made with knowledge or consent of defendant. We know of no such agreement; order fixing bail was made in Council Bluffs and Omaha. We were represented there by attorneys Harl and Turley, who certainly had no authority make such agreement—neither have they advised us of such agreement.

"O'NEAL & RICHARDSON."

The Appeal is Not Taken For Delays.

While we can not know the real motives of parties in acting under advice of counsel, the grounds of objection to the indictment and to removal to Omaha from San Francisco are apparently so substantial as to demand serious attention and afford a most satisfactory reason for objection.

Article 6 of the Constitution secures the right to the accused to a trial in the district "wherein the crime shall have been committed." In the case presented, the indictment not only fails to disclose where the alleged crime was committed, but declares that its locality is unknown to the grand jurors. The fact that later certain acts are averred to have been committed at designated places can not take the place of an averment that the crime charged, to wit, conspiracy, was committed in a designated dis-

trict. Unless the provision referred to in the Constitution is to be made light of, the objection seems substantial and not purely technical.

Rule thirty-four (34). We have construed this rule as a prohibition upon the lower courts and not upon this court. We submit that this court has complete control of the matter of bail and may admit these prisoners if, in its opinion, a sufficient showing of cause is made. It was in this view that we consented to submit the motion. We are not aware that the court has heretofore passed upon a similar case or has construed the rule. If we are wrong in the construction of paragraph 1 of rule 34 and this rule is a limitation upon the power of this court, the motion to admit to bail will, of course, be denied, but we submit that its fair interpretation supports the jurisdiction.

We further submit that the very fact that the prisoners are called upon to respond to an indictment found against them in a district very remote from the place of arrest, affords ample ground for objection to the removal proceedings on any apparently substantial grounds.

Respectfully submitted.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellants.



FILED

OCT 20 1911

JAMES B. McINERNEY,

IN THE

Supreme Court of the United States

October Term, 1911

No. 201

FRANK W. BROWN, Appellant,

C. T. Elliott, United States Marshal in and for the Northern District of California, et al., Appellees.

No. 202

R. G. MOORE, Appellant,

C. T. Elliott, United States Marshal in and for the Northern District of California, et al., Appellees.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

WRIT FOR HABEAS CORPUS.

ARTHUR A. BURNETT,

HENRY E. WOODMAN,

Attorneys for Appellants.

THE UNIVERSITY OF CHICAGO

IN THE
Supreme Court of the United States

OCTOBER TERM, 1911.

No. 201.

FRANK W. BROWN, *Appellant*,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California, *et al.*, *Appellees*.

No. 202.

E. C. MOORE, *Appellant*,

vs.

C. T. ELLIOTT, United States Marshal in and for the Northern District of California, *et al.*, *Appellees*.

APPEALS FROM THE CIRCUIT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

These are appeals from final judgments of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, denying separate applications of the appellants for discharge upon *habeas corpus* and dismissing their petitions.

The petitioner in each case was arrested on a bench warrant issued out of the District Court for the Omaha Division of the District of Nebraska, upon an indictment found by the Grand Jury of that Court, intending to charge a conspiracy among a large number of persons, including the appellant, to defraud various persons out of their money and property by means of a scheme of fraud set out in full in the indictment, which is found at page nine of the record and is at great length.

Appellant in each case, upon being arrested, was taken before a United States Commissioner and by him committed to the jail of the County of Alameda, State of California, the Commissioner finding, after an examination, that the offence alleged had been committed and probable cause shown (Rec., p. 39). A warrant of removal to Omaha was then made by the judge of the District Court for the Northern District of California. Each appellant then filed his petition in the Circuit Court for writs of *habeas corpus* and *certiorari* (Rec., p. 1), which were, on December 6, 1909, denied and the petitions dismissed, as above stated.

PROPOSITIONS TO BE ARGUED.

The propositions to be argued under the assignment of errors (Rec., p. 58) are that the indictment under which appellant was arrested was fatally defective and that it insufficiently charged an offence upon which appellant might lawfully be tried in the Omaha Division of the District of Nebraska, for the reasons:

1. That said indictment does not allege that the conspiracies set forth therein, or either of them, were formed or entered into in the said District of Nebraska or the State of Nebraska, but alleges on the contrary that the conspiracies set forth were formed and entered into at a place and district unknown.

2. Because said indictment does not allege, nor does either of the counts thereof allege, that the first overt acts alleged to have been done pursuant to said alleged conspiracies, were done and committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that said first overt acts done and committed pursuant to said alleged conspiracies, and each of them, were done and committed at a place and district unknown.

3. Because said indictment and each of the counts thereof affirmatively alleges and shows that the conspiracies set forth therein, and each of them, were formed and entered into more than three years prior to the finding of said indictment, and that the first overt acts committed pursuant to said alleged conspiracies, and each of them, were committed more than three years prior to the finding of the said indictment.

4. Because said indictment does not allege that the appellant consciously participated in any overt act done or committed pursuant to said conspiracies, or either of them, within a period of three years next preceding the finding of said indictment.

ARGUMENT.

I.

THE VENUE.

Clause 3, Section 2, Article III of the Constitution provides for the trial of all crimes in the State where "the said crimes shall have been committed."

It was essential to the jurisdiction of the District Court for the Omaha Division of Nebraska that it should affirmatively appear upon the face of the indictment that the crime charged might lawfully be tried in that Court. Yet this indictment charges in each of its two counts that the conspiracy alleged was entered into during the year 1905 "in

the United States of America *the exact place and district whereof is to the grand jurors unknown.*" (Rec., pp. 17, 94.)

It is true that the indictment alleges that the conspiracy contemplated the doing in the Omaha District of a number of acts of deception, to execute the unlawful scheme to defraud, and to effect the object of the conspiracy (Rec., pp. 12, 32), and overt acts are charged to have been committed at Omaha, but it is submitted that *if the criminal offence is the conspiracy* it was essential that it be given a locality.

"There is no proposition better established than that the venue in a criminal case must be laid in the county [district] where the offence was committed."

People v. Mather, 4 Wend., 229, S. C., 21 Am. Dec., 122.

Bish. Crim. Proc. Ch. XXIV.

"As a general rule the venue of an offence must be laid in order that it may appear that the Court has jurisdiction." * * *

Ency. Pl. & Pr., Vol. 22, P. 825.

This Court has determined that the offense to be alleged under Sec. 5440, R. S., is the conspiracy and not the overt acts done in pursuance thereof. The same rule must be declared as to Sec. 5480.

The confederacy to commit the offence is the gist of the criminality under this section, although to complete it some act to effect the object of the conspiracy is needed.

U. S. v. Hirsch, 100 U. S., 33.

U. S. v. Britton, 108 U. S., 190, 204.

Bannon v. U. S., 156 U. S., 464.

Hyde v. Shine, 199 U. S., 62, 76.

Com. v. Bartilson, 85 Pa., 482.

An overt act may draw with it the previously formed conspiracy so as to warrant the allegation in the indictment that the conspiracy was formed where the overt act was committed, but in this case there is no such averment, and the mere recital of overt acts committed in Omaha will not take the place of the necessary direct allegation of the place of the conspiracy necessary to jurisdiction.

U. S. v. Britton, *supra*.

Pettibone v. U. S., 148 U. S., 197.

Com. v. Bartilson, *supra*.

As was said in *United States v. Hirsch*:

"The *gravamen* of the offence here is the conspiracy.
* * * It remains true that the combination of minds in an unlawful purpose is the foundation of the offence."

This being true, does it not follow as of course that the indictment, to be within the jurisdiction of the Court, should in terms charge that the conspiracy was entered into within the State or the District in which that Court has power to act?

As well might it be claimed that the Omaha Court would have jurisdiction of an indictment for larceny of the property of the United States alleged to have been committed in some State to the grand jurors unknown.

The charge is of *one* conspiracy entered into in 1905 at a place and district unknown, continued until February 23, 1909, and overt acts committed by certain of the conspirators during that period are cited, these overt acts consisting of the renting by one of a post office box in the post office at Omaha and the reception of a letter thereat; and the reception or depositing of letters in the mail at Omaha by John C. Mabray, R. B. Herriman, Ed. Leach, Bert R. Shores, William Scott, Charles L. Scott and Frank M. Mc-

Call, respectively, each of the letters being averred to have concerned the conspiracy and to effect the object thereof.

It is submitted upon authority of the decisions cited that these recitals cannot supply the omission complained of, and that the indictment was fatally defective.

In the Pennsylvania case cited (*Com. v. Bartilson*) the Court was dealing with a motion to quash an indictment for conspiracy which alleged an unlawful confederation entered into beyond the statutory period of limitation, and then proceeded to state a series of overt acts done in pursuance of the conspiracy, each being linked to that which preceded it and to the general charge by the allegation that it was "in pursuance and as a renewal of said conspiracy, combination, confederacy and agreement, so as aforesaid had and made," two of the overt acts being laid within two years (the limitation period in Pennsylvania) of the finding of the indictment.

The court affirmed the order quashing the indictment, saying:

"According to the first count the offence was complete on the 20th of December, 1874. The overt acts do not constitute the offence. They are the evidence of it, and are sometimes said to be the aggravation of it. An overt act may or may not be unlawful, *per se*. It is because of its relation to an unlawful combination that it becomes obnoxious to the criminal law. The averment that the conspiracy was renewed from time to time does not meet the difficulty. If it proves anything, it proves too much. The renewal of a conspiracy means to begin it again; to recommence it; to repeat it. From this it is apparent that each renewal is a new offence; a repetition, it is true, of a former one, but still an offence for which an indictment would lie. * * * The date of the offence should have been laid within the statutory period. The Commonwealth must *allege* and prove a conspiracy within two years."

It is submitted that this is the correct doctrine.

This was not a question to be passed upon only by the trial court at Omaha; it went to the jurisdiction of the Court and was within a well-considered line of decisions which hold in substance that upon *habeas corpus* the examining court will examine the indictment to determine if it contains a definite charge of crime.

In Buell's case a prisoner arrested in Michigan upon an indictment found in the District of Columbia, was taken before Judge Dillon upon *habeas corpus*. It was contended by the Government that the question of the sufficiency of the indictment was for the court in which it was found, and not for the district judge where the prisoner was arrested. The contention was overruled, the Court saying:

"Mere technical defects in an indictment should not be regarded, but a district judge who should order the removal of a prisoner when the only probable cause relied on or shown was an indictment, and that indictment failed to show an offense against the United States, or showed an offense *not committed or triable in the district to which the removal is sought*, would misconceive his duty and fail to protect the liberty of the citizen."

In re Buell, 3 Dillon, 116.

Subsequent decisions have repeatedly adopted this view and it is the accepted rule of practice of the Federal Courts.

In re Palliser, 136 U. S., 257.

In re Doig, 7 Fed., 193 (Calif.).

In re Coy, 31 Fed., 794.

S. C., Affirmed, 127 U. S., 731.

Ex parte Siebold, 100 U. S., 376.

Stewart vs. U. S., 119 Fed., 89.

Horner vs. U. S., 143 U. S., 207.

In re Terrell, 51 Fed., 213 (N. Y.).

In re Greene, 52 Fed., 104 (Ohio).

And it has been the practice since long before the case of Buell.

Ex parte Bollman and Swartwout, 4 Cranch (S. C.), 75, 136.

II.

In like manner, the indictment does not show that the first overt acts of the conspirators were committed in the State of Nebraska. The first overt act made the conspiracy indictable as a complete offense under the statute. The averment of each count of the indictment is that from the time of the conspiracy in 1905 and until February 23, 1909, it was "in process of execution and operation" which can only mean that at some undefined place or places overt acts were performed. This only accentuates the error pointed out under the first head.

There is also authority for the position that since the conspiracy became indictable upon the commission of the first overt act, the statute of limitations is a bar to the prosecution.

U. S. v. Owen, 32 Fed. R., 534.

U. S. v. Irvine, 98 U. S., 450; 147 Fed. R., 840.

2 McClain's, Crim. Law., 973.

This was the precise point determined by the Supreme Court of Pennsylvania in Bartilson's case from which we have quoted at length.

The crime of conspiracy being a non-continuous crime, but complete upon the agreement, and subject to prosecution upon the first overt act, the *continuando* will be disregarded, and the indictment treated as charging no more than the commission of the crime on the first day.

Wharton's Crim. Pl. & Pr. 9th ed., Sec. 125.

1 Bish. New Crim. Proc., Sec. 388.

III.

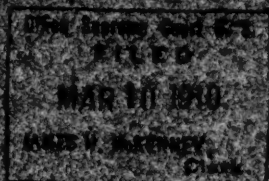
The indictment does not allege a conscious participation by the appellant in any overt act done or committed within the period of three years, and is wholly consistent with his innocence of participation therein and his abandonment of the enterprise.

The indictment falls far short of this. It charges a conspiracy among a large number of persons, entered into in 1905; that such conspiracy continued until February 23, 1909, without charging that *all of the conspirators* or this appellant continued to conspire, and in the charge of overt acts *avers nothing as against this appellant.*

We agree that the act of one conspirator done in pursuance of the unlawful combination to which others are parties may, because it is a step authorized and contemplated by them charge them with liability, but this is only so if it appear that the others were parties to the agreement *at the time of the overt acts*; for otherwise such acts will not be *their acts*. Surely a conspirator may withdraw from the conspiracy without proclaiming it in the public press or giving formal notice to prosecuting officials, and, having withdrawn will, after three years, be protected by the act of limitations. The indictment then should charge that the particular defendant was a conspirator at the time of the overt act. This is not done by the indictment in hand.

It is submitted that the indictment is fatally defective; was insufficient to warrant the Circuit Court in holding the appellant in custody, and that the judgment should be reversed and the prisoner discharged.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellants.



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

RUSSELL B. HERRIMAN, APPELLANT,

v.

THE UNITED STATES.

No. 20620

FRANK W. BROWN, APPELLANT,

v.

THE UNITED STATES.

No. 20621

R. C. MOORE, APPELLANT,

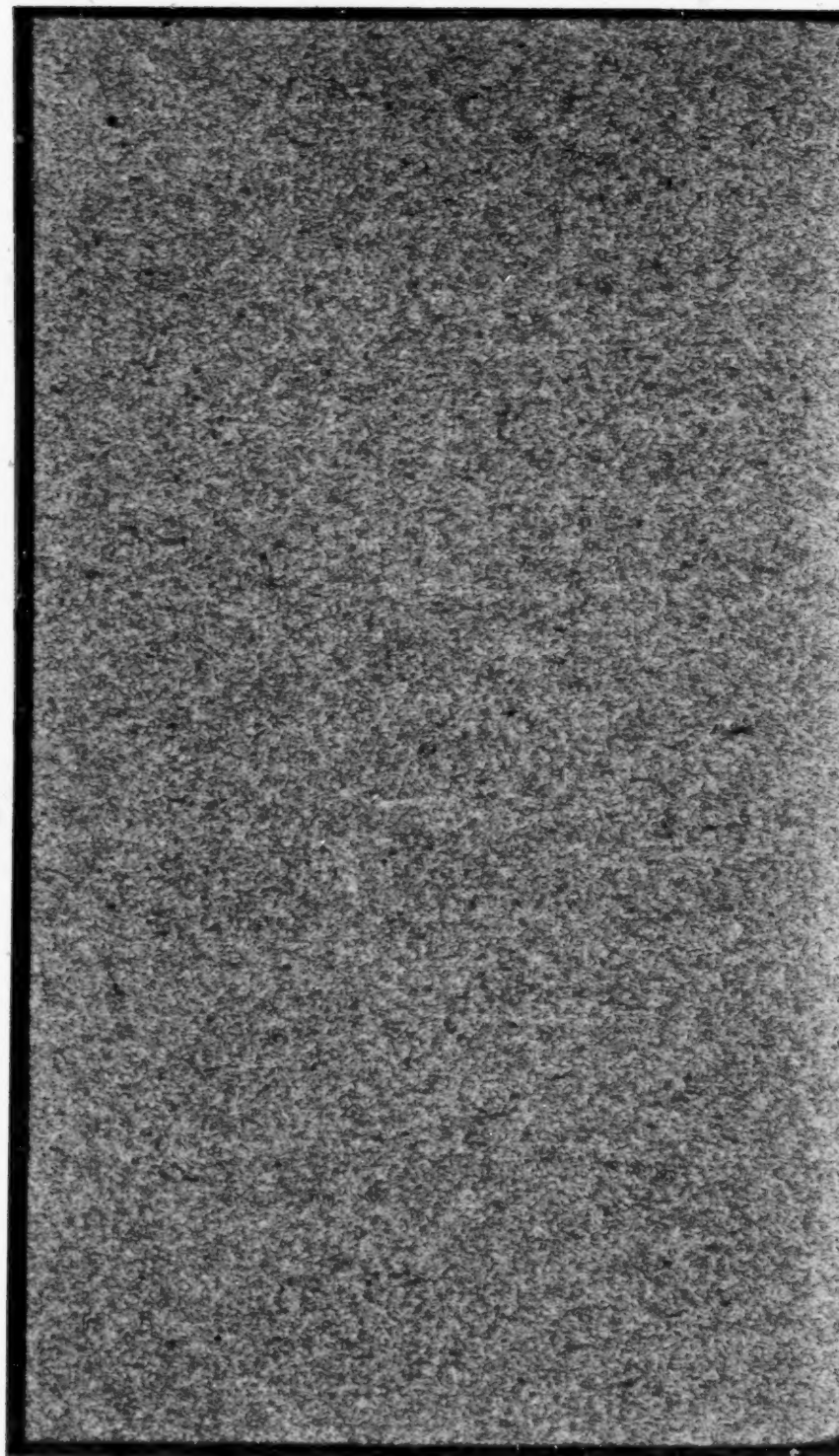
v.

THE UNITED STATES.

No. 20622

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF CALIFORNIA.

BRIEF IN OPPOSITION TO MOTIONS OF APPELLANTS
FOR ADMISSION TO BAIL.



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

RUSSELL B. HERRIMAN, APPELLANT,	}	No. 776.
<i>v.</i> THE UNITED STATES.		

FRANK W. BROWN, APPELLANT,	}	No. 777.
<i>v.</i> THE UNITED STATES.		

R. C. MOORE, APPELLANT,	}	No. 778.
<i>v.</i> THE UNITED STATES.		

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF CALIFORNIA.

BRIEF IN OPPOSITION TO MOTIONS OF APPELLANTS FOR ADMISSION TO BAIL.

Rule 34 of this court provides—

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

This case comes under the first paragraph of the rule, the Circuit Court having declined to grant the writ of habeas corpus, and therefore the custody of the prisoners is not to be disturbed, unless this court for special cause shall direct otherwise.

It is submitted that no special cause is shown or exists for the suspension of the rule in these cases; that these proceedings were instituted simply for the purpose of delay; and, further, that the appellants have been guilty of gross misrepresentations, both to this court and to the court in which the indictment against them was returned, in the matter of their applications for bail.

I.

The habeas corpus proceedings and these appeals were taken simply for delay.

The records on these appeals show that the appellants were indicted in the United States District Court for the District of Nebraska for violating section 5440 of the Revised Statutes of the United States by conspiring to commit an offense against the United States denounced by section 5480, namely, using the mails in furtherance of a scheme to defraud; that proceedings for their removal from the

Northern District of California to the District of Nebraska for trial were regularly instituted before the United States Commissioner at San Francisco, who, after a hearing, committed them for that purpose, and that the district judge duly issued the warrants for their removal under which they are now held.

Appellants then applied to the United States Circuit Court for the Northern District of California for writs of habeas corpus and certiorari, their petitions setting forth fully all the proceedings before the United States Commissioner upon the application for their removal. Upon hearing, their petitions were denied, from which judgments they appealed to this court.

The records in these cases further show that at the hearing before the United States Commissioner upon the removal proceedings the Government introduced certified copies of the indictment found against appellants in the District of Nebraska and established their identity as defendants named therein; and further, that no evidence whatever was introduced by appellants to overcome the *prima facie* case established by the indictment, their efforts being confined entirely to technical objections to the sufficiency of the indictment and an attempt to conceal their identity.

Rule 34 of this court is framed to cover the several situations that may arise upon habeas corpus proceedings. If upon the showing made by the petition alone the court declines to grant the writ, it

is provided that the custody of the prisoner shall not be disturbed, presumably because of the necessary inference that the application is, on its face, entirely devoid of merit. Where the writ is issued, but subsequently discharged, discretion is allowed the court as to whether the prisoner shall be detained in custody or enlarged upon recognizance. Finally, if the prisoner is discharged, the right to bail pending appeal is made absolute.

In these motions, as in the petitions for the writs of habeas corpus and the removal proceedings, appellants rely entirely upon technical objections to the indictment returned against them in the District of Nebraska. Their principal claim is that the indictment fails to allege that the offense charged was committed in the District of Nebraska, basing their contention upon the fact that the indictment avers that the conspiracy referred to was "*originally* formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the Grand Jurors unknown, in the United States of America, the exact place and district whereof is to the Grand Jurors unknown." This statement is also made the basis for their contention that the prosecution is barred by the lapse of time.

The indictment was properly held to be sufficiently specific for the purpose of removal. (*Benson v. Henkel*, 198 U. S., 1; *Haas v. Henkel*, decided February 21, 1910.) It shows that the grand jurors were inquiring of offenses committed within the District of Nebraska, and after setting out the names

of the alleged conspirators, charges that they theretofore, "to-wit, on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, *did then and there*, unlawfully, willfully, knowingly, corruptly, falsely and wickedly conspire, combine, confederate and agree together," etc. All of the overt acts alleged to have been committed in furtherance of the conspiracy, such as the hiring of a post-office box and the sending and receiving of letters, are charged to have been committed at Omaha in the District of Nebraska. The appellants have simply seized upon a subsequent averment in the indictment as to when and where the conspiracy was *originally* formed, for the purpose of contending that it does not charge an offense committed within the State and District of Nebraska or within the period of limitations.

The several petitions for the writ of habeas corpus contain nothing beyond what has been stated to support the allegations that appellants have been deprived of their liberty in violation of the Constitution of the United States.

II.

As to the charge of misrepresentation.

Each of the motions for admission to bail contains a statement to the effect that after the Circuit Court had denied appellant's petition for writs of habeas corpus and certiorari and an appeal had been taken to this court, the United States District Court for the District of Nebraska, in which the indictment had been returned, made an order fixing bail for appel-

lants (\$6,000 for Herriman, and \$3,000 each for Brown and Moore), the bail for each having been originally fixed at \$15,000. The several motions then allege (paragraph Third)—

but so it is that your petitioner being advised that under the law his custody by said United States Marshal may not be disturbed pending his appeal except by order of this Court, such bail has not been given and he remains in the custody of the United States Marshal.

It further appears from the copy of the order reducing the bail, which is attached to the several motions before this court, that the amount of the bail bonds was fixed by the court, with the consent of the United States attorney.

Thinking it rather peculiar that the United States attorney would consent to a reduction of bail while appellants were still resisting removal, the Department wired him for information on the subject, and was informed *that the bonds were reduced upon application of counsel for appellants upon an agreement or statement in open court that if they were so reduced the defendants would return to Nebraska and Iowa (indictments having also been returned against them in that State and District) without further objection and without further resisting the removal proceedings.*

Under these circumstances the above quoted statement as to the reason why the bail fixed by the Nebraska court had not been given is certainly disingenuous, to say the least. Such misrepresentations further support the view that these proceedings have been taken for the purpose of delay.

Of course we do not mean to imply that local counsel for appellants are aware of the deception practiced in these cases. We assume that they have simply been misled by the statements of others.

III.

Independent of Rule 34, bail should be refused.

The order for the removal of defendants was made after due hearing and upon a finding of probable cause, the appellants, both at the hearing before the United States Commissioner and upon their petitions for writs of habeas corpus, relying entirely upon technical objections to the indictment not proper to be considered upon removal proceedings. Probable cause for believing that appellants had committed an offense against the United States in the District of Nebraska having been thus regularly established, the presumption of innocence, for purposes of removal, has been overcome, and the court should refuse to countenance what are manifestly dilatory proceedings by admitting them to bail pending their appeal upon habeas corpus proceedings.

Under the circumstances of the case appellants' position is similar to that of a convicted person.

In *McKnight v. United States* (113 Fed., 451, 453) the Circuit Court of Appeals for the Sixth Circuit, speaking by Mr. Justice Lurton, said:

We quite agree with counsel for the Government that all presumption of innocence is gone after conviction, and that proceedings resorted to for the mere purpose of delay should be discouraged.

In *People v. Lohman* (2 Barb., 450, 454), the court said—

at each step of the proceeding the grounds upon which the prisoner can be let to bail diminish, as the evidences of his guilt increase; because bail is not based on the grace or favor of the court, but solely on the doubt which may exist as to his guilt.

In the present cases there can be no reasonable doubt that there is probable cause for believing that appellants have committed an offense against the United States in the District of Nebraska.

The practice of granting writs of habeas corpus after a finding of probable cause has been made by the proper authorities upon removal proceedings, in which proceedings, as this court has held, the defendant is entitled to full opportunity to overcome the *prima facie* case made by an indictment or other proof offered by the Government, is certainly to be deplored. In this case the Circuit Court declined to grant the writ, and properly so, but its action will go for naught, so far as concerns the speedy administration of justice, if appellants are admitted to bail pending their appeal.

For the reasons stated, it is respectfully submitted that the motions to admit to bail should severally be denied.

LLOYD W. BOWERS,
Solicitor-General.

WILLIAM R. HARR,
Assistant Attorney-General.

MARCH, 1910.

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HONORABLE MCKENNEY

No. ~~400~~ 201

In the Supreme Court of the United States.

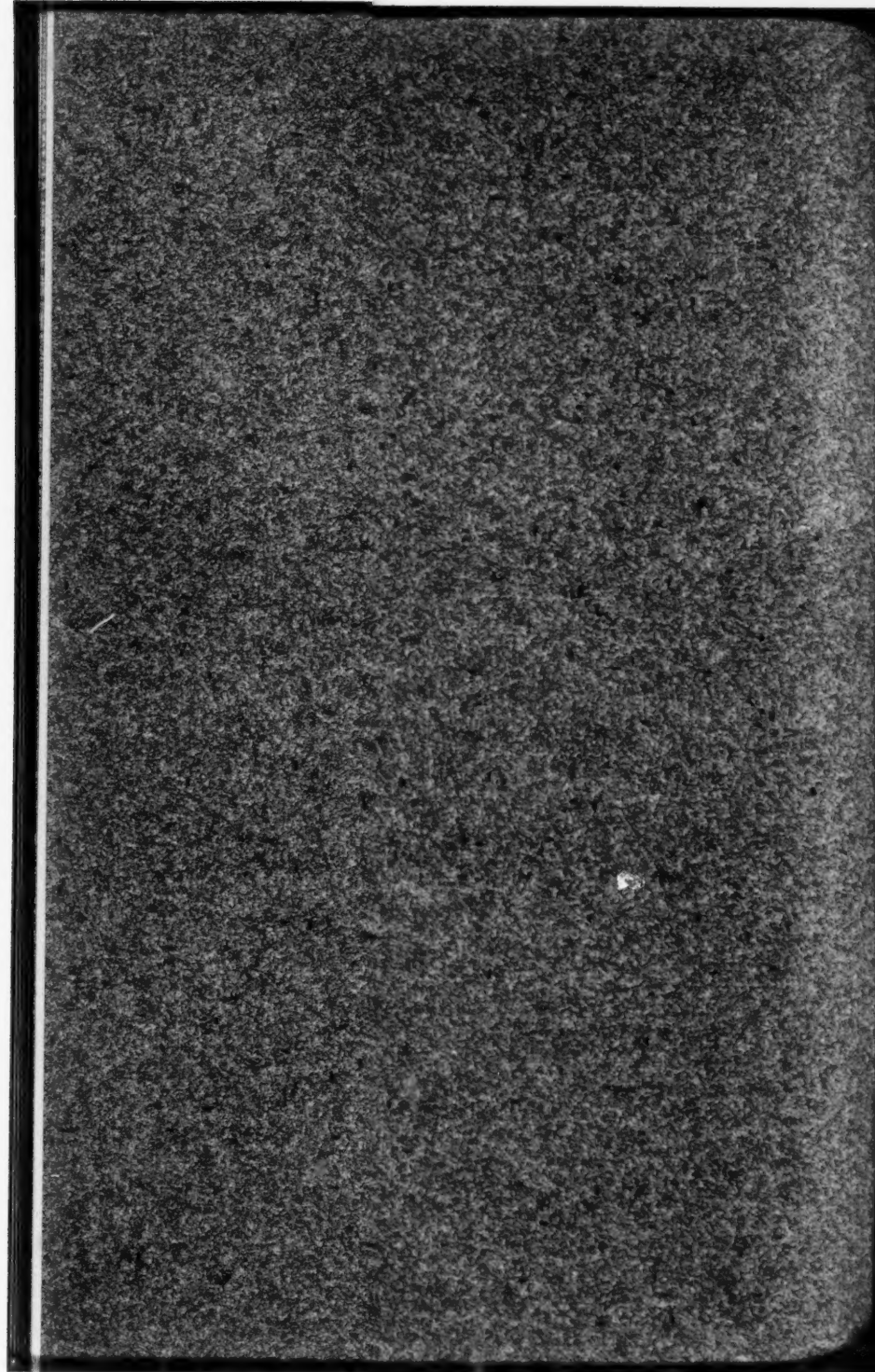
OCTOBER TERM, 1909.

FRANK W. BROWN, APPELLANT,

C. T. ELIOTT, UNITED STATES MARSHAL, WTC., ET AL.

APPEAL FROM UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT
OF CALIFORNIA.

BRIEF IN OPPOSITION TO MOTION OF APPELLANT
FOR ADMISSION TO HAIL.



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

FRANK W. BROWN, APPELLANT,	} No. 777.
v.	
C. T. ELLIOTT, UNITED STATES	
MARSHAL, ETC., ET AL.	

*APPEAL FROM UNITED STATES CIRCUIT COURT, NORTHERN
DISTRICT OF CALIFORNIA.*

BRIEF IN OPPOSITION TO MOTION OF APPELLANT FOR ADMISSION TO BAIL.

Similar motions in behalf of Brown and his codefendants, Herriman and Moore, appellants in Nos. 776 and 778, were denied by this court on March 14, 1910. The present motion is based upon an affidavit purporting to be made by the regular physician of the jail at Alameda County, Cal., that the condition of Brown is such that longer confinement would mean permanent injury to his health.

In view of certain misrepresentations on the part of these parties, by which they secured a reduction of bail in the United States District Court for the District of Nebraska upon the assurance

that if the bail was reduced they would return to Nebraska without further resisting the removal proceedings (see Government's brief in opposition to former motions for admission to bail), it was thought advisable to investigate the allegations now made as to Brown's condition.

At the direction of the department, Dr. William K. Sanborn, of Oakland, Cal., was employed by the United States marshal for the Northern District of California to examine Mr. Brown. Appended hereto is a copy of the certificate made by Doctor Sanborn as the result of his examination, the original being filed with the clerk of this court. After describing Mr. Brown's condition in detail, Doctor Sanborn concludes his certificate with the statement that in his opinion confinement is not likely to produce any disastrous results.

Under the circumstances, and in view of the fact that appellant's further confinement in jail is practically voluntary, and for the purpose of avoiding his duly authorized removal to Nebraska for trial, in which district he can obtain bail, the present motion should also be denied.

LLOYD W. BOWERS,
Solicitor-General.

WILLIAM R. HARR,
Assistant Attorney-General.

[Copy.]

C. P. ELLIOT,

*U. S. Marshal, Northern Dist. California,
San Francisco, Cal'f.*

This is to certify that under the direction of the U. S. marshal for the Northern District of California, on the 9th day of May, 1910, at the Alameda County jail, I examined one Frank W. Brown, and found the following conditions:

Upon first observation he walked with some stiffness of both legs; holding the head in a fixed position. Gave his age as 43. He measured 5' 10", weighed 161 pounds.

Upon physical examination found the vital organs of the body in good condition except the heart.

Heart enlarged, somewhat tumultuous in action, irregular, but no valvular murmurs.

Pulse 100. Temperature under tongue, 100°. No swelling of knees or ankles; no tenderness on pressure. Tenderness of muscles of neck, posteriorly, with some rigidity. Tenderness of muscles of shoulders. Somewhat anæmic. In my opinion confinement not likely to produce any disastrous results.

WM. K. SANBORN M. D.

OAKLAND, CAL'F. *May 10th, 1910.*

Subscribed and sworn to before me this 10th day of May, 1910.

W. S. ANGWIN,

*Notary Public in and for the County of
Alameda, State of California.*

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Office Supreme Court, U. S.
FILED.

MAR 14 1911

JAMES H. MCKENNEY,
CLERK.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1910.

~~No. 122, 041-1-10-10~~

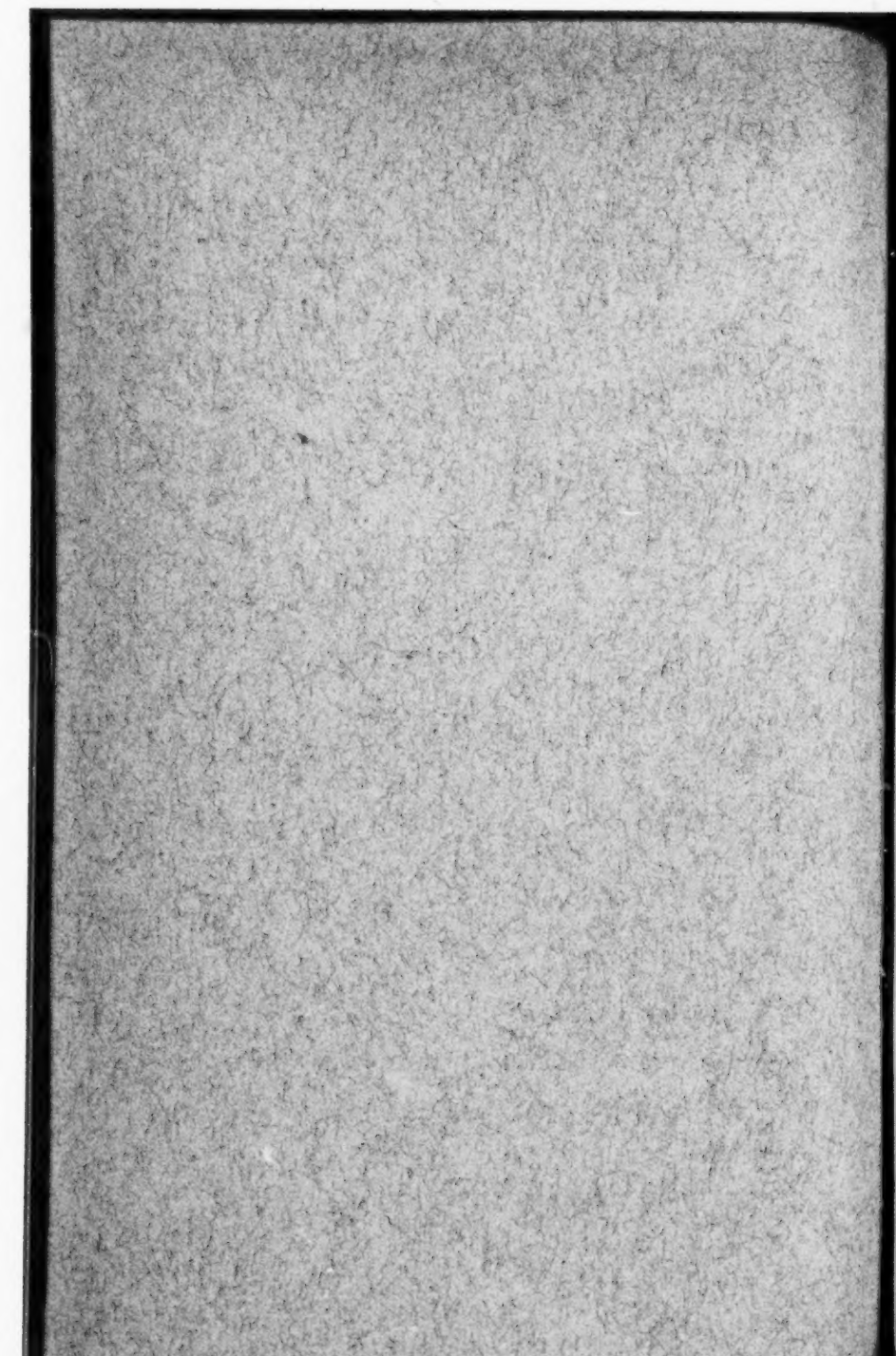
E. C. MOORE, APPELLANT,

vs.

C. T. ELLIOTT, U. S. MARSHAL, ET AL.

**Motion for Admission of Appellant to Bail
Pending the Determination
of the Appeal.**

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Appellant,
Washington, D. C.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1910.

No. 428, October Term.

E. C. MOORE, APPELLANT,

v.s.

C. T. ELLIOTT, U. S. MARSHAL, ET AL.

**Motion for Admission of Appellant to Bail
Pending the Determination
of the Appeal.**

And now comes the above named appellant, E. C. Moore, by Arthur A. Birney and Henry F. Woodard, his attorneys, and renews his motion to the court for an order admitting the said E. C. Moore, appellant, to bail pending the determination of the appeal of the said appellant in this court, in the sum of \$3,000, or such other sum as shall to the court seem proper, with sufficient sureties, conditions according to law and subject to the approval of a district or circuit judge of the United States for the Northern District of California, for the reason, among others, *that said E. C. Moore is in a precarious condition of health and his eyesight very seriously impaired*, as will appear by the annexed certificate and affidavits.

ARTHUR A. BIRNEY,

HENRY F. WOODARD,

Attorneys for Appellant,

Washington, D. C.

Notice of Motion.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1910.

E. C. MOORE, Appellant,	}	No. 428, October Term.
<i>vs.</i> C. T. ELLIOTT, U. S. MARSHAL, ET AL.		

The Honorable Attorney-General of the United States:

You will please take notice that the appellant in the above entitled cause will, on Monday, the 20th day of March, 1911, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the court-room of the Supreme Court of the United States in the Capitol, in the City of Washington, District of Columbia, move the said Supreme Court for an order admitting the said E. C. Moore, appellant, to bail pending the determination of the proceedings on appeal to said Supreme Court, in the sum of \$3,000, or such other sum as shall to said court seem proper, with sufficient sureties, conditioned according to law, and subject to the approval of a district or circuit judge of the United States for the Northern District of California.

Said motion will be based upon the notice, the affidavit of Dr. C. E. Curdts, the affidavit of Dr. Kohlmoos, and the affidavits of the sheriff and officials of the Alameda County Jail, Oakland, California, and the remaining record, files, proceedings and papers in this cause.

ARTHUR A. BIRNEY,
HENRY F. WOODARD,
Attorneys for Petitioner.

March 10th, 1911.

AFFIDAVITS.

OAKLAND, CAL., Feb. 2, 1911.

I, E. C. Moore, have been a Federal prisoner in the Alameda County Jail, at Oakland, California, for the past sixteen months, being so held under custody of the United States Marshal, awaiting decision in an appeal to the United States Supreme Court.

I entered the above institution October 2, 1909, in perfect health and with eyesight unimpaired. During the month of August, 1910, I began to suffer with indigestion and nervous breakdown, which became so aggravated during September and October, 1910, as to require constant medical attention; from that time until the present, my condition has grown steadily worse, and from which I am suffering greatly.

In September, 1910, my eyesight began to fail, accompanied by severe headaches; this condition has grown steadily worse, necessitating two examinations by a specialist, who finds my disability to be such as to deny me the use of my eyes for any than the most essential purposes, and no glass he can prescribe or treatment he can give will afford relief.

My vitality has become so impaired that I am unable to combat these disabilities, and I feel certain that further confinement will injure my health and eyesight permanently.

In view of the facts herein set forth, and more specifically stated in the accompanying certificates of the attending physicians, I earnestly petition the Honorable Court to grant me bail.

E. C. MOORE.

STATE OF CALIFORNIA, *ss.*
County of Alameda, *v.*

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court

of said County (which is a Court of Record), do hereby certify that Edward E. Gehring, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 7th day of February, A. D. 1911.

JOHN P. COOK,

[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, }
County of Alameda, } ss.

On this 4th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, Edward E. Gehring, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared E. C. Moore, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and

affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

[SEAL.] EDWARD E. GEHRING,
*Notary Public in and for said County
 of Alameda, State of California*

AFFIDAVIT.

OAKLAND, CAL., Jan. 31, 1911.

For the past four months, E. C. Moore, a Federal prisoner in the Alameda County Jail, Oakland, California, has been under my treatment. I have made several examinations, the last on January 30, 1911, and I find in conjunction with his eye trouble (which is explained by Dr. Kohlmoos) that he has trachycardia and pronounced neurasthenia accompanied by headache, tingling sensations in legs, arms and hands, dyspepsia, constipation and mental phases which have all been present for the past few months, and on account of his confinement does not yield to treatment as it otherwise should, and I believe that further confinement will undoubtedly result in permanent injury to his health.

C. E. CURDTS,
Physician to Alameda County Jail.

STATE OF CALIFORNIA,)
 County of Alameda,)^{ss.}

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that Edward E. Gehring, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and

authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 7th day of February, A. D. 1911.

JOHN P. COOK,

[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, }
County of Alameda, } ss.

On this 4th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, Edward E. Gehring, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared C. E. Curdts, physician to Alameda County Jail, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

EDWARD E. GEHRING,

[SEAL.] *Notary Public in and for said County
of Alameda, State of California.*

AFFIDAVIT.

OAKLAND, CAL., Jan. 30, 1911.

Under order from U. S. Marshal Elliott, on December 1, 1910, I made an examination of the eyes of E. C. Moore, a Federal prisoner in the Alameda County Jail, Oakland, California. I found his trouble to be of such nature, that I made, on December 6, 1910, a more complete examination, which bore out my former diagnosis, *hyperesthesia of the retina*.

I also inspected carefully the quarters in which he is kept and found the arrangement and lack of sufficient light to be such, that I forbid him the use of his eyes, for any purpose, other than absolutely essential. His condition is such that no glass I could prescribe would relieve, and further confinement will undoubtedly result in serious and permanent injury to the sight.

H. KOHLMOS, M. D.

STATE OF CALIFORNIA, }
County of Alameda, } ss.

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that Edward E. Gehring, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State

and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 7th day of February, A. D. 1911.

JOHN P. COOK,
[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, {
County of Alameda, }^{ss.}

On this 4th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, Edward E. Gehring, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared H. Kohlmoos, M. D., known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

EDWARD E. GEHRING,
[SEAL.] *Notary Public in and for said County
of Alameda, State of California.*

AFFIDAVIT.

OAKLAND, CAL., Feb. 2, 1911.

E. C. Moore has been confined in this institution as a Federal prisoner for the past sixteen months, and my reports show that he entered in good health and with sound eyesight.

He has come under my personal observation from time to time; at the present, his eyesight is rapidly failing and his general health is not good.

In my opinion further confinement will affect his sight permanently and impair his health.

FRANK BARNET,
Sheriff, Alameda County.

Subscribed and sworn to before me this 6th day of February, 1911.

[SEAL.] J. B. LANKTREE,
*Notary Public in and for the County
of Alameda, State of California.*

My commission expires February 5, 1913.

STATE OF CALIFORNIA, }
County of Alameda, } ss.

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that J. B. Lanktree, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 6th day of February, A. D. 1911.

JOHN P. COOK,

[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, }
County of Alameda, } ss.

On this 6th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, J. B. Lanktree, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared Frank Barnet, Sheriff of Alameda County, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same as such sheriff.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

J. B. LANKTREE,

[SEAL.] *Notary Public in and for said County
of Alameda, State of California.*

AFFIDAVITS.

OAKLAND, CAL., Feb. 2, 1911.

We, the undersigned officials of the Alameda County Jail, Oakland, Cal., certify

That E. C. Moore has been a Federal prisoner in this institution since October 2, 1909. He came here in good sound health and apparently perfect eyesight; for nearly sixteen months he has been under our daily observation.

About four months ago he began to complain of his eyes, about the same time his general health began to fail, at the present time his serious condition is plainly apparent, and in our opinion further confinement will result in permanent injury to his health and sight.

J. D. MOFFETT,

CHAS. K. CLARK,

J. W. SOARES,

Assistant Jailers.

Subscribed and sworn to before me this 6th day of February, 1911.

J. B. LANKTREE,

[SEAL.]

*Notary Public in and for the County
of Alameda, State of California.*

My commission expires February 5, 1913.

STATE OF CALIFORNIA, }
County of Alameda, } ss.

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that J. B. Lanktree, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and authorized by law to take the same; and duly authorized to

take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 6th day of February, A. D. 1911.

JOHN P. COOK,
[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, }
County of Alameda, } *ss.*

On this 6th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, J. B. Lanktree, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared J. D. Moffitt, Chas. K. Clark, and J. W. Soares, Asst. Jailers, known to me to be the persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same as such Asst. Jailers.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

J. B. LANKTREE,
[SEAL.] *Notary Public in and for said County
of Alameda, State of California.*

AFFIDAVIT.

OAKLAND, CAL., Feb. 2, 1911.

E. C. Moore, a Federal prisoner, has been confined in this institution since October 2, 1909.

He came here in good, sound health and to all appearances with perfect eyesight. He has been under my observation at all times.

He is now, and has been for some time, suffering from his eyes; his general health is also affected.

I believe that further confinement will very seriously impair his sight and health.

I desire further to state that this prisoner's conduct during the sixteen months he has been under my charge has been perfect.

P. L. WHITE,
Chief Jailer.

Subscribed and sworn to before me this 6th day of February, 1911.

J. B. LANKTREE,
[SEAL.] *Notary Public in and for the County
of Alameda, State of California.*

My commission expires February 5, 1913.

STATE OF CALIFORNIA, }
County of Alameda, } ss.

I, JOHN P. COOK, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said County (which is a Court of Record), do hereby certify that J. B. Lanktree, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and herein written, was, at the time of taking such proof or acknowledgment a Notary Public in and for said County, duly commissioned and qualified and

authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to all his official acts as such Notary Public.

And I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the said State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 6th day of February, A. D. 1911.

JOHN P. COOK,

[SEAL.] *County Clerk and Clerk of the Superior
Court of Alameda County.*

STATE OF CALIFORNIA, {
County of Alameda, } ss.

On this 6th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, J. B. Lanktree, a Notary Public in and for the County of Alameda, State of California, residing, therein, duly commissioned and sworn, personally appeared P. L. White, Chief Jailer, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same as such Chief Jailer.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Alameda, State of California, the day and year in this certificate first above written.

J. B. LANKTREE,

[SEAL.] *Notary Public in and for said County
of Alameda, State of California.*

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1910.

E. C. MOORE, Appellant,

vs.

UNITED STATES OF AMERICA,

} No. 778.
} October Term.

In the matter of the application of the above named appellant for admission to bail pending his appeal.

E. C. Moore, appellant in the above entitled cause, respectfully represents to the court as follows:

First. That, as by the record of this cause will appear, he is imprisoned and restrained of his liberty by C. T. Elliott, United States marshal for the Northern District of California, in the City of Oakland, county of Alameda, State of California, under color of authority of the laws of the United States and by virtue of a warrant of removal claimed to have been issued under Section 1014 of the Revised Statutes of the United States, signed by Hon. John J. De Haven, judge of the District Court of the United States for the Northern District of California, on November 29, 1909, and directing the removal of this appellant to the District of Nebraska, Omaha Division, and his delivery to the United States marshal for said district and division, to be by him produced before the United States court for trial upon an indictment found by the grand jury of the United States for the District of Nebraska, Omaha Division.

Second. That after the said orders of commitment and removal, this appellant presented his petition to the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California, for writs of habeas corpus and certiorari but said court by its order dated December 6, 1909, denied the same; and from said order this appellant prayed an appeal to this court, which appeal was, on December 7, 1909, duly allowed; and on

the same day this appellant executed, with sureties, and filed his bond for costs on such appeal and the transcript of said record has been duly lodged in this court.

Third. That thereafter said cause came again before the United States District Court for the District of Nebraska, upon an application of this petitioner to be admitted to bail, and thereupon the court passed an order fixing the bail for this appellant at the sum of \$3,000, as will more fully appear by the duly certified copy of said order hereto attached, but so it is that your petitioner being advised that under the law his custody by said United States marshal may not be disturbed pending his appeal except by order of this court, such bail has not been given and he remains in the custody of the United States marshal.

Fourth. This appellant further shows that the offense alleged against him by the indictment aforesaid, so found by the grand jury for the District of Nebraska, Omaha Division, is the violation of Section 5440 of the Revised Statutes of the United States, by having conspired, etc., with one Ernest Fenby and divers other persons to commit the acts made crimes and offenses by Section 5480 of the Revised Statutes of the United States, as amended by an act of Congress entitled "An act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," approved March 2, 1889, in devising a scheme to defraud various persons, to be effected by means of the postoffice establishment of the United States. Said indictment is at great length, but in substance charges that this appellant and others did conspire to cheat and defraud divers persons through the device of agreements to organize and conduct horse races and athletic contests to be held in divers cities of the United States therein set forth, which races and contests were to be conducted in a fraudulent manner, and by falsely representing that the said conspirators were of large means and could and would control the results of

said races and contests, whereby the said persons were to be induced to bet their money upon the said contests, and were thereafter by other devices defrauded of the same (as will at large appear in the transcript of record here filed), and that the conspirators to carry out said scheme were to rent postoffice boxes in different postoffices of the United States and to transmit letters through the mails.

Appellant further shows that in neither of the counts of the said indictment is it averred that the said conspiracy was entered into at any time in the District of Nebraska, but it is averred that it was—

“originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown.”

This appellant is advised by counsel and so avers that his arrest and detention are illegal, and in violation of the Constitution of the United States, and particularly of Clause 3, Section 2, Article III thereof, and of Article VI of the amendments thereto, in this, to-wit: The said indictment by color whereof your petitioner is held in imprisonment, as aforesaid, shows that the District Court of the United States, for the District of Nebraska, has no jurisdiction of the alleged offenses set out in said indictment; that the said indictment in neither of its counts avers that the conspiracy set forth therein was formed or entered into in the said District of Nebraska or the State of Nebraska, but, on the contrary alleges in each count as hereinbefore shown, that the conspiracy therein alleged was entered into at a place and district unknown; and for that said indictment does not allege *nor does either of the counts thereof allege that the first overt acts alleged to have been committed, were committed in the District of Nebraska, or the State of Nebraska, but affirmatively alleges that such first*

overt acts were committed at a place and district unknown

Your petitioner is also advised and will so contend before this court, that the said indictment and each of the counts thereof does not charge this petitioner with a crime against the United States; and further that said indictment and each count thereof shows affirmatively that the conspiracy therein alleged is barred from prosecution by lapse of time, and the operation of the statute of limitations applicable thereto; and further that the evidence introduced before the United States commissioner and before the United States district judge does not show that there is probable cause for believing this appellant to have committed the alleged offenses in the District of Nebraska or State of Nebraska.

Fifth. Your petitioner further shows and avers that the condition of his eyesight is such that his continued imprisonment will probably result in the fatal impairment of his eyesight as will appear from the affidavits of C. E. Curdts, who is a licensed medical practitioner, located in the City of Oakland, County of Alameda, State of California, setting forth the condition of petitioner's eyesight, as well also the affidavit of Dr. H. Kohlmoos, oculist, of Oakland, California. Your petitioner also files other affidavits of persons who come in contact with him and who know of his impaired sight.

Your petitioner is also advised that the hearing of his appeal herein is not likely to come on for hearing before this court for a very considerable length of time. Your petitioner therefore shows and avers that unless he is admitted to bail pending such appeal the continued imprisonment will in all probability result very disastrously to plaintiff's sight and in serious and permanent injury thereto.

Your petitioner further respectfully states that at the time of his commitment and imprisonment that there was also committed and imprisoned two other persons upon like indictments, as will appear by the records in Numbers 776

and 777, October Term, 1909, of this court. Petitioner states that the defendant Herriman, who was the appellant in Case 776, died while in prison, and that the appellant, Frank W. Brown, in Case 777, was rendered very ill by reason of his confinement and so continued until this court granted the petition of said Brown and extended to him the right of bail, as will appear by the records of this court.

Petitioner further states that he heretofore made application to this court for admission to bail, but at that time his eyesight was not seriously affected and has only become affected since his incarceration; that petitioner's former application was disallowed by this court, but appellant now prays that by reason of the serious condition of his eyesight that he may be admitted to bail pending the determination of his appeal to this court in the sum of three thousand dollars (\$3,000), or such other sum as shall to the court

E. C. MOORE.

STATE OF CALIFORNIA, { ss:
County of Alameda. {

Personally appeared before me, a notary public in and for the county and State aforesaid, E. C. Moore, who being duly sworn deposes and says that he has heard read the foregoing petition and that the statements therein contained are true as he verily believes.

Witness my hand and notarial seal this 2nd day of March, 1911.

J. B. LANKTREE,

[SEAL.]

Notary Public.

STATE OF CALIFORNIA, { ss:
County of Alameda. {

I, John P. Cook, County Clerk of the County of Alameda, State of California, and Clerk of the Superior Court of said county (which is a court of record), do hereby certify that J. B. Lanktree, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, and herein written, was, at the time of taking

such proof or acknowledgment a notary public in and for said county, duly commissioned and qualified and authorized by law to take the same; and duly authorized to take acknowledgments to deeds to be recorded in said State and full faith and credit are due to his official acts as such notary public.

And I do further certify that I am well acquainted with the handwriting of the said notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged according to the laws of the State of California.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 2nd day of March, 1911.

JOHN P. COOK,

[SEAL.]

*County Clerk and Clerk of the
Superior Court of Alameda Co.*

(Copy.)

UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA.

September, 1909, Term, Omaha, Nebraska.

Saturday morning: January 15, 1910.

Court opened pursuant to adjournment.

Present: Thomas C. Munger, judge.

The following, among other proceedings, were had and done, to-wit:

UNITED STATES OF AMERICA

140P vs.

JOHN C. MABRAY ET AL.

Order Reducing Bonds.

Now, on this day, this matter came on for hearing, and the United States attorney consenting, the court doth

Order that the defendants, E. C. Moore, R. B. Herri-
man, and Frank W. Brown, be admitted to bail, with

surety to be approved by the clerk of this court, the said bonds conditioned as required by law, in the penalty of the sums, as follows, to-wit:

The said defendant, R. B. Herriman, in the sum of \$6,000.

The said defendants, E. C. Moore and Frank W. Brown, in the sum of \$3,000 each.

The orders heretofore made with reference to the bonds of said defendants are modified to the extent that the same shall be in harmony with the order now here made.

THOS. C. MUNGER, *Judge*.

Endorsed: Filed Jan. 15, 1910. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:
Omaha Division.

I, R. C. Hoyt, clerk of the District Court of the United States for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the journal of the proceedings of said court in the above entitled action as the same appears of record in my office.

Witness my hand and seal of said court, at Omaha, in said district, this 18th day of January, A. D. 1910.

[SEAL.]

R. C. HOYT, *Clerk*.

Affidavit Accompanying Petition to be Admitted to Bail.

UNITED STATES OF AMERICA, }
State of California, } ss:
County of Alameda.

C. E. Curdts, being first duly sworn, deposes and says:

I am a regularly licensed and practicing physician and I reside at No. 742 53d street, in the city of Oakland, County of Alameda, State of California.

I have been in regular attendance upon E. C. Moore, the petitioner for bail herein, for the past five months, during his incarceration in the Alameda County Jail.

During said period said E. C. Moore has been under my professional care for attacks of acute inflammatory rheumatism. During most of this time he has been confined to his bed and the last attack he has had has been more severe than any previous attack.

His heart is much enlarged and its action is very weak. His general condition is very poor and he shows the bad effects of confinement more and more each day. In my opinion, much longer confinement would mean permanent injury to his health as his disease does not seem to respond to treatment and he seems to be gradually growing worse. I am also of opinion that his confinement for the ensuing six months might result in fatally or, at least, be ultimately dangerous to his health by greatly aggravating his disease.

C. E. CURDTS, M. D.

Subscribed and sworn to before me this 30th day of April, A. D. 1910.

J. B. LANKTREE,
*Notary Public in and for the County
of Alameda, State of California.*



201 + 202
Nos. ~~197, 198~~

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

FRANK W. BROWN, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

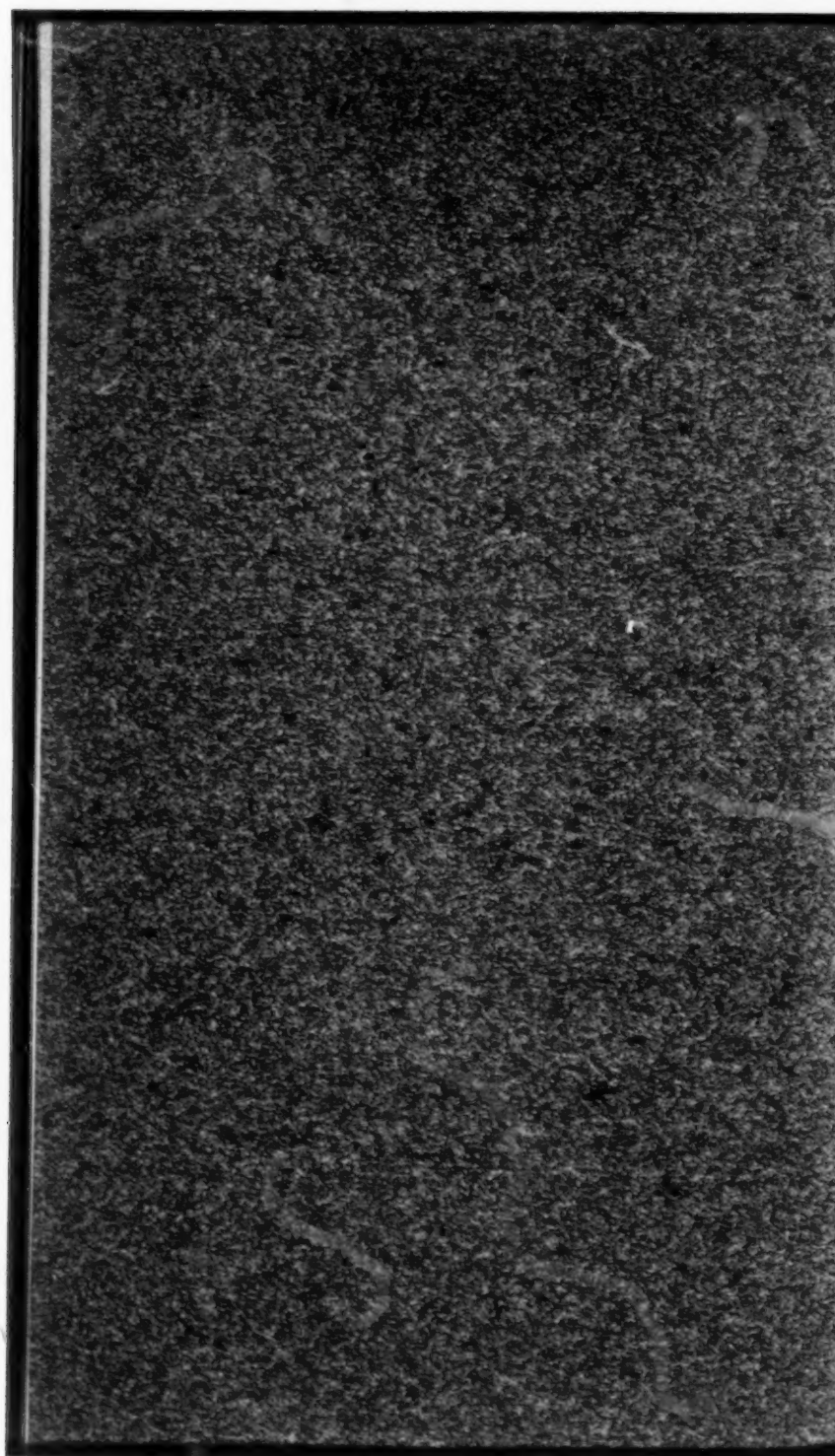
E. C. MOORE, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1910.

FRANK W. BROWN, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL } No. 427.
in and for the Northern District of }
California, et al. }

E. C. MOORE, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL } No. 428.
in and for the Northern District of }
California, et al. }

*APPEALS FROM THE CIRCUIT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.*

MOTION TO ADVANCE.

The appellants in the above-entitled cases were indicted in the District Court of the United States for the District of Nebraska on the 7th day of October, 1909, charged with conspiring to commit the acts made offenses and crimes by section 5480 of the Revised Statutes, as amended by the act of Congress of March 2, 1889 (25 Stat., 873), entitled "An act

to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails." The scheme of the defendants was the inducing of other persons to bet on certain athletic performances, horse races, etc., the results of which were fixed before the event; the scheme being effected by means of the post office establishment of the United States.

The defendants were arrested at San Francisco, Cal., and brought before a United States commissioner, who held them in \$15,000 bail each, in default of which they were remanded to the custody of the marshal to await an order of removal to Nebraska for trial.

An order of removal was made on November 29, 1909, by the United States District Court for the Northern District of California. Thereafter, on December 1, a petition for a writ of habeas corpus was filed in the Circuit Court of the United States for the Northern District of California in each of the cases, which petitions were, on December 6, denied. These appeals were then taken.

Russell B. Herriman, the appellant in No. 426, who was indicted with Brown and Moore, and by whom similar habeas corpus proceedings were instituted, is now deceased.

The appellant Brown was admitted to bail by order of this court on May 31, 1910, in the sum of \$5,000, and Moore in the sum of \$3,000 on March 20, 1911.

As the trial of the criminal case can not be had until these appeals are disposed of, the Solicitor General moves the court to advance the cases on the docket and set them down for hearing on a day convenient to the court during the October term, 1911.

Notice of this motion has been served upon counsel for the appellants.

FREDERICK W. LEHMANN,

Solicitor General.

APRIL, 1911.



13
Office Supreme Court, U. S.
FILED

OCT 9 1911

JAMES H. McKENNEY,
CLERK.

Nos. 201, 202.

In the Supreme Court of the United States

OCTOBER TERM, 1911.

FRANK W. BROWN, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

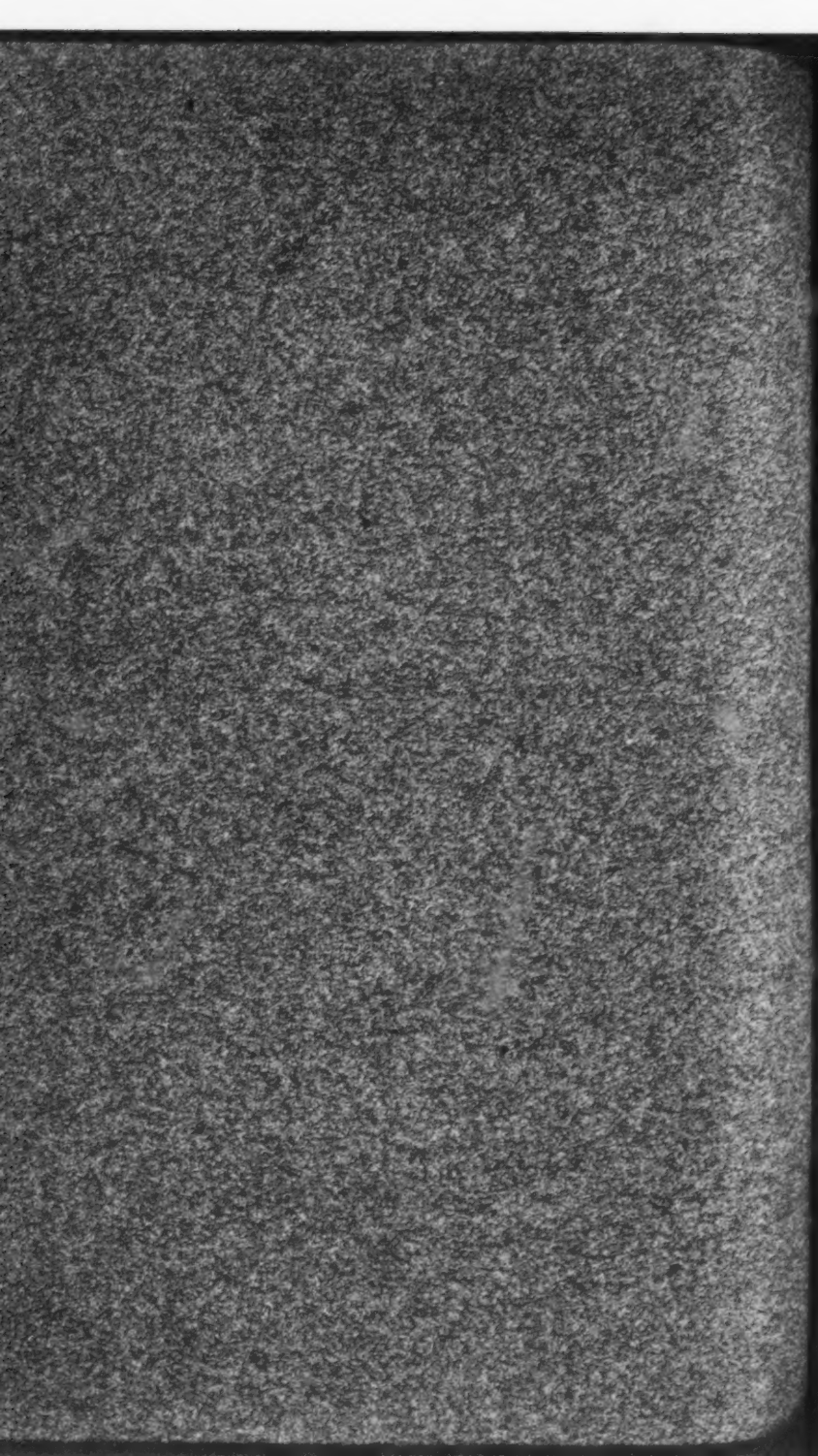
E. C. MOORE, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MARSHAL IN AND FOR
THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT, BRIEF, AND ARGUMENT.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

FRANK W. BROWN, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MAR-
shal in and for the Northern District
of California, et al. } No. 201.

E. C. MOORE, APPELLANT,

v.

C. T. ELLIOTT, UNITED STATES MAR-
shal in and for the Northern District
of California, et al. } No. 202.

*APPEALS FROM THE CIRCUIT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.*

STATEMENT, BRIEF, AND ARGUMENT.

THE CASE.

These two cases are the same as to the questions involved, and we therefore shall confine ourselves to the first one, No. 201, and make all our references to the record in that.

The appellant, Frank W. Brown, was indicted in the Eastern Division of the District of Nebraska and was arrested in the Northern District of California.

He resisted removal before the commissioner, but was committed none the less, and from the warrant for his removal issued by the District Court he sought release through the writ of habeas corpus. The Circuit Court for the Northern District of California dismissed his petition (R., 56), and he brings the matter to this court by appeal.

THE INDICTMENT.

John C. Mabray and ninety-one others, of whom Frank W. Brown was one, were indicted in the Omaha Division of the District of Nebraska, on the charge of having formed a conspiracy to devise and carry out a scheme to defraud many persons, some of whom are named and others of whom are unknown, the scheme to be effected by the use of the United States mails.

The scheme as described in the indictment (R., 9-36) is an elaborate one.

The conspirators went about the country from time to time and from place to place pretending that some of their number were millionaires seeking to make large investments of capital, while others in the train were jockeys and athletes, who, for the recreation of of the millionaires, engaged in horse races, prize fights, wrestling matches, and other athletic contests. To make profit, even by pleasure, the millionaires laid heavy wagers upon these sporting events, and under the skillful management of their secretary they had been uniformly successful. But the secretary had been ill used, nourished a grievance, and was

thirsting for revenge. He would now "fix" the outcome of some contest in advance, the millionaires would lose and be despoiled of their ill-gotten gains. But the plan required strangers, apparent victims to the millionaires, to do the betting against them. Of course, the secretary could not bet against his masters, nor could any known friend of his. So strangers must be brought in. They need not bet their own money. The secretary would furnish all that was needed, but the strangers must place the money that the millionaires might not suspect the game of which they were being made the victims. To give plausibility to this arrangement, the strangers must bring money, in as large sums as they could raise, in the form of checks, drafts, or letters of credit—any form that could be made at once available—to be used only as evidence to the millionaires that these strangers were men of means, who could afford to hazard large amounts, and were wagering their own money and also were worth plucking. The gains the secretary would make by this clever scheme he was to divide with these strangers who helped him to carry it out. When the contest came on, however, the secretary under various pretenses got possession of the money of the strangers, involved it in the betting upon the event, and then some untoward accident occurring, the runner on behalf of the strangers falling and greatly injuring himself, or their wrestler being grievously hurt, the plan to despoil the millionaires would fail, and the money wagered by the strangers

was lost. A cry would be raised that the officers of the law were about to descend upon them, everyone was advised to save himself as best he could, and the victims, conscious of the wrongdoing they had themselves intended, would betake themselves in shame and haste to their homes.

There were variations in this plan, but in its general principle it was always the same. Men were found whose integrity was of weak fiber, and insidiously beset with the temptation of making large gains without risk, and so finally lured to engage in a fraudulent scheme of which they found themselves to be the victims and of which they dared not complain.

The conspiracy charged by the indictment was a continuing one. The scheme involved was one to be repeated from time to time and in different parts of the country, whenever and wherever new victims could be found. The use of the mails was an essential part of the programme. There was correspondence between the conspirators themselves and between the conspirators and their victims, and letters from the conspirators to each other, framed to serve as lures for their victims.

The first count of the indictment, which sets out the scheme in great detail, may be found at pages 9 to 16 of the record.

The indictment alleges that the conspiracy was originally formed during the year 1905, exact date unknown, and also that the exact place where it was formed is unknown (R., 16, 17).

The indictment, however, charges—

1. That the conspiracy continued in existence and in process of execution and operation at all times until the 23d day of February, 1909 (R., 17).

2. That in the way of its execution there were committed at Omaha, Nebraska, during the years 1907 and 1908, nine distinct overt acts, as follows, viz:

I. On April 5th, 1907, conspirator Mabray rented a box for the use of the conspiracy at the Omaha post office.

II. On June 18th, 1907, conspirator Herriman took from the post office at Omaha a letter from victim F. R. Marts.

III. On June 18th, 1907, Herriman took from the post office at Omaha a second letter from Marts.

IV. On June 27th, 1907, conspirator Ed. Leach took from the post office at Omaha a letter from the victim Marts.

V. On September 9th, 1907, conspirator Bert R. Shores deposited a letter in the Omaha post office addressed to victim George Alberts, at Minneapolis, Minn.

VI. On April 14th, 1908, conspirator William Scott deposited in the post office at Homer, Nebraska, in the Omaha Division, a letter addressed to victim Henry Stogsdill, at Cabool, Missouri.

VII. On May 19th, 1908, Scott mailed another letter at Homer, Nebraska, to Stogsdill in Missouri.

VIII. On July 14th, 1908, Scott, at Omaha, took from the post office a letter from victim Adolf Yeske, mailed at Billings, Montana.

IX. On October 25th, 1908, conspirator Frank M. McCall, at Omaha, mailed a letter addressed to conspirator I. J. Warner, at Denver, Colorado.

These overt acts are set out in detail at pages 17 to 29 of the record.

In brief, then, the indictment, which was presented October 7th, 1909, charges a conspiracy and scheme to defraud, originally formed more than three years before the finding of the indictment, but continued and kept in operation, both conspiracy and scheme, until the very year in which the indictment was found; and while the indictment pleads ignorance of where the conspiracy was originally formed, it charges that it was to be carried out, among other places, at Omaha, Nebraska, and that, pursuant to the plan therefor, nine different overt acts in execution of the conspiracy and scheme to defraud were committed at Omaha by a number of the conspirators during the years 1907 and 1908, and so within the period of limitation.

The petitioner, Brown, contends that the indictment is not good, not sufficient even to sustain a warrant for his removal, because—

(a) It does not allege that the conspiracy was originally formed in Nebraska.

(b) It does not allege that the first overt acts under the conspiracy were committed in Nebraska.

(c) It charges no crime at all against the petitioner.

(d) The crime charged is barred by the statute of limitations.

POINTS AND AUTHORITIES.

I.

The indictment is sufficient in substance for the purposes of removal to charge the appellant with the crime of having conspired, in violation of section 5440 of the Revised Statutes, to commit offenses forbidden by section 5480.

Bannon and Mulkey v. United States, 156 U. S., 464.

Stokes v. United States, 157 U. S., 187.

Benson v. Henkel, 198 U. S., 1

II.

The conspiracy and the scheme to defraud being both of them continuous and having been continued in operation until the year of the indictment, the offense is not barred, no matter when the conspiracy was first formed.

United States v. Kissel and Harned, 218 U. S., 601.

United States v. Barber, 219 U. S., 72.

III.

The indictment plainly charges that the conspiracy and the scheme were being actually operated in the Omaha Division of the District of Nebraska, and nine overt acts to effectuate them having been there committed, there was jurisdiction of the offense in that division and district.

United States v. Kissel et al., 218 U. S., 601.

United States v. Barber, 219 U. S., 72.

People v. Mather, 4 Wend., 229-259.

IV.

The identity of the petitioner with the person of the same name charged in the indictment was a question of fact to be determined by the commissioner.

Horner v. United States, 143 U. S., 207.

V.

The indictment, there being no showing contra, afforded probable cause for believing the petitioner to be guilty as charged and so justified his commitment and removal.

Beavers v. Henkel, 194 U. S., 73.

Benson v. Henkel, 198 U. S., 1.

Price v. Henkel, 216 U. S., 488.

ARGUMENT.

I.

Section 5440 of the Revised Statutes of the United States makes it a crime for two or more persons to conspire "to commit any offense against the United States;" and it makes all the conspirators equally guilty if "one or more of such parties do any act to effect the object of the conspiracy."

Section 5480 makes it an offense to use the mails of the United States, either by way of sending or receiving any mail matter, in the course of executing any scheme or artifice to defraud which was devised and intended to be effected by such use of the mails.

The indictment in this case charges as plainly as possible in the iterative jargon of criminal pleading that the appellant Brown, with many others, did "unlawfully, wilfully, knowingly, corruptly, falsely, and wickedly conspire, combine, confederate and agree

together and with Ernest Fenby, and with divers other persons to the grand jurors unknown" (R., 11).

This certainly charges the fact of conspiring. And the charge is directly and indirectly repeated a number of times in the first count, which is all we need to consider.

The purpose of the conspiracy is then set out, and it is "to commit the acts made offenses and crimes by section 5480 of the Revised Statutes of the United States" (R., 11).

It does not stop with this general charge, but proceeds to describe the intended offense as consisting "in devising and intending to devise a scheme and artifice to defraud various persons out of their money and property, to be effected by means of the Post Office establishment of the United States" (R., 11).

It then names about eighty-five known persons as intended victims, and says that there were other victims intended but unknown (R., 11, 12).

At great length and in great detail are set forth the plans and methods of the fixed and fraudulent sporting events culminating, it is enough to say, in despoiling and disgracing the poor victims, leaving them as poor in name as in purse. The story of this drags through pages 12 to 15 of the record.

The most casual reading shows the scheme of the conspirators and all its methods to be fraudulent and the frauds as gross and palpable as the lies of Falstaff. Moreover, the indictment abounds with averments that the scheme and the representations by which it was supported were false and fraudulent.

Finally, the indictment charges nine distinct overt acts, committed by seven different conspirators and involving eight distinct uses of the mails, including both the transmission and receipt of mail matter, and all for the effectuation of the fraudulent conspiracy and scheme.

It is true that no overt act is charged against the petitioner, but the fact of conspiracy is charged against him, and that is sufficient. (*Bannon and Mulkey v. United States*, 156 U. S., 464.) And this makes the indictment good in so far as section 5440 is involved.

As to section 5480, the indictment meets the requirements held to be essential in *Stokes v. United States*, 157 U. S., 187. It alleges (1) that the persons charged devised a scheme to defraud; (2) that they intended to effect this scheme by opening correspondence with their proposed victims and by inciting those victims to correspond with them; (3) and that in carrying out the scheme they did both receive and transmit letters through the mails.

This indictment, therefore, will stand the test of trial. But in this proceeding it is not to be considered in such critical spirit. The indictment here is to be considered rather as evidence than as a pleading, and so considered it is plainly sufficient, for it states facts which, if true, prove that the petitioner and others charged with him have been guilty of an offense under sections 5440 and 5480. (*Benson v. Henkel*, 198 U. S., 1.) And with the indictment as evidence the petitioner did not join issue.

II.

The conspiracy in this case contemplated continuous performances. Contest after contest, fraud after fraud, was contemplated. There was nothing to call halt upon these people until they came upon a victim who felt the loss of his money more than the loss of his good name, and whom no fear of scandal could restrain from complaint.

The indictment charges that the scheme was to conduct these races at Council Bluffs and Davenport, Iowa; St. Louis, Missouri; Little Rock, Arkansas; Denver, Colorado; New Orleans, Louisiana; Seattle, Washington, and divers other places. This required time. And the indictment charges expressly that while the conspiracy was formed in 1905, it "was continuously in existence, and in the process of execution and operation," until February third, 1909, the year in which the indictment was found.

No offense can gain immunity from punishment on the ground that it is one of a series, connected by a common purpose, the first of which lies beyond the bar of the statute. A conspiracy, as a thing of present existence and force, manifests itself whenever something is done to carry it into effect, and so long as it is in existence it is an offense and punishable as such, whether it be young or old. Indeed, its being, as disclosed in action, rather than its mere birth, invites the punishment of our law, and so the statute of limitations runs not from the date of its birth, but only from the date of its death.

The indictment charges against all the parties named an active, aggressive continuance of the conspiracy, and overt acts in pursuance of it until within less than a year of the time of finding the indictment. The charge, therefore, is not barred. (*United States v. Kissel*, 218 U. S., 601, and *United States v. Barber*, 219 U. S., 72.)

III.

As the time of a conspiracy is all of the time during which it is in existence, so the place of it is wherever its members, or any of them, may be in the execution of its purposes. And so it is laid down in Archbold's Criminal Practice that "in indictments for conspiracy, the venue may be laid in any county in which it can be proved that an overt act was done by any one of the conspirators in furtherance of their common design." (*People v. Mather*, 4 Wend., 239, l. c. 259.)

Omaha, in 1907 and 1908, was the base of operations of these people. It was there they committed the acts in pursuance of the conspiracy which kept it alive, and the court of that district and division had jurisdiction of their offense.

IV.

If any question as to the identification of the petitioner with the defendant of his name in the indictment should be raised, it is settled by *Horner v. United States*, 143 U. S., 207, which holds that the decision of the commissioner upon that question will not be reviewed on *habeas corpus*.

That the petitioner was properly removed upon the evidence of probable cause afforded by the indictment itself is settled beyond controversy in *Beavers v. Henkel*, 194 U. S., 73; *Benson v. Henkel*, 198 U. S., 1; and *Price v. Henkel*, 216 U. S., 488.

It is respectfully submitted that these cases should be affirmed.

F. W. LEHMANN,
Solicitor General.

BROWN *v.* ELLIOTT, UNITED STATES MARSHAL IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, *et al.*

MOORE *v.* ELLIOTT, UNITED STATES MARSHAL IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Nos. 201, 202. Argued October 19, 1911. Reargued May 1, 1912.—Decided June 10, 1912.

If the indictment under § 5440, Rev. Stat., sufficiently charges the commission of overt acts within the district, it is sufficient even if it states that the place where the conspiracy formed is unknown.

The Sixth Amendment to the Constitution does not preclude the place of trial of conspirators indicted under § 5440, Rev. Stat., being in any State where an overt act was performed. *Hyde v. United States*, *ante*, p. 347.

A conspiracy entered into in violation of § 5440, Rev. Stat., may be a continuous crime, and, if it was designed to be, and was, continuous, every overt act was the act of all the conspirators by reason of the terms of their unlawful plot.

Where there are successive overt acts during the existence of the conspiracy, the period of limitation must be computed from the date of the last of them properly specified in the indictment, although some of them may have occurred more than three years before the indictment was found.

The Constitution of the United States is not intended as a facility for crime, but to prevent oppression; its letter and its spirit are satisfied if where a criminal purpose is executed that criminal purpose be punished. The criminal himself makes the venue of his trial.

THE facts, which involve the validity of an indictment under § 5440 Rev. Stat., are stated in the opinion.

Mr. Henry F. Woodard and Mr. A. A. Birney for appellants.

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The Solicitor General for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

These appeals involve the action of the Circuit Court in dismissing petitions for writs of *habeas corpus* to discharge appellants from the custody of appellee, United States Marshal for the Northern District of California. Both appellants were held under a warrant of removal made by the District Court of that district upon an order of commitment made by a United States commissioner in proceedings for the removal of appellants to the District Court of Nebraska.

There was an indictment found against appellants in the District Court of the Omaha Division of the District of Nebraska for the crime of conspiracy, in which it was charged that they and others whose names, aliases and the numbers by which they were designated as part of the means of effecting the scheme, and who in the indictment are called "conspirators," "on the fifth day of April, in the year of our Lord one thousand nine hundred and seven, did then and there" conspire with Ernest Fenby and other persons to the grand jurors unknown "to commit the acts made offenses and crimes by § 5480 of the Revised Statutes of the United States, as amended by an Act of Congress enacted March 2, 1889 (25 Stat. 873, c. 393) entitled 'An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails.'" And it is charged that appellants and the other persons conspired in devising and intending to devise a scheme and artifice to defraud various persons out of their money and property, to be effected by means of the post-office establishment of the United States, and particularly to defraud certain persons who were named. To avoid repetition, they are called in

the indictment "victims," and they were to be defrauded of their money and property by the conspirators "agreeing to organize, institute, conduct and manage certain horse races and athletic contests . . . as wagering contests upon which money should be bet," at Council Bluffs, in Iowa, and in certain places in Missouri, Arkansas, Colorado, Louisiana and Washington, and other places to the grand jurors unknown, and "at Omaha, district aforesaid." The races and contests were to be conducted in a fraudulent, unfair and dishonest manner and to be controlled solely by the conspirators so that the outcome was known in advance, with intention thereby to defraud the victims. The charge is made with much circumstance and detail which it is not necessary to repeat except to say that the conspirators were to be represented as millionaires traveling through the United States making investments in municipal, county and city bonds, and in other projects, and having with them horses and athletes for their private amusement which they would match with those of strangers. One of the conspirators was to be represented to be the secretary to the others and as having charge of the contests which he had theretofore always managed with great financial profit and gain as well as to the amusement of his employers, but that he had become aggrieved at the treatment he had received and would so manage the contests that the horses and athletes of the millionaires would lose, and that he was desirous of betting against them and thereby win their money for himself and for such other persons as would bet for him as his secret agents. Others of the conspirators were to represent themselves to the victims to be friends and relatives of the "secretary" and had been requested by him to procure men of financial standing to act as his secret agents in betting money against his employers, the millionaires, and it was to be represented that it was necessary for him to procure such persons of financial standing and respon-

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sibility to represent him and bet his money in order to conceal his disloyalty to his employers. Such persons were not to bet their own money but the secretary's money, and be paid a percentage of the winnings. The victims were to be induced to bring letters of credit or negotiable paper for large sums of money and thereby establish credit in the bank of the town where the races and contests were to be conducted. And when they, relying on the fraudulent representations of the secretary, should bet and wager money furnished by him they were to be informed that the money was not in fact his but was his employers' money; that they, the employers, had or might become suspicious that the money was not that of the victims and the secretary not the stakeholder, and to prevent criminal prosecutions the races and contests would be called off; that therefore it would be necessary for the victims to come to his (the secretary's) rescue and bet their money for him and allay such suspicions and to insure the races and contests proceeding to a finish as arranged, the money to be returned after the races and contests. And it was to be represented that the races and contests terminated unfortunately through an unusual and deplorable accident, to wit, a serious injury to one of the jockeys or one of the athletes and in such way that it would be unfair to declare themselves winners, and additional races and contests were to be conducted in the same manner and an opportunity afforded to win back the money lost. Finally it was to be represented to the victims that they had been engaged in a criminal transaction, which had resulted in a serious injury to a person, and to avoid arrest and criminal prosecution they (the victims) were to depart from the scene, and leave the money bet with the secretary, who was to convert it to the use and gain of the conspirators. And this was alleged to be fraudulent and done with intention to deceive, etc.

The manner of carrying out the scheme was alleged

to be to rent a United States post-office box for the delivery of the mail in the United States post-office at Omaha, Nebraska, and in other cities throughout the United States where any of the conspirators should establish headquarters in furtherance of the scheme and artifice to defraud, and the conspirators were to assume and request to be addressed by the number of such boxes respectively and carry on their correspondence with each other through and by means of the post-office establishment of the United States by the use of such assumed title numbers without the use of their own proper names, and to assume other names and request their victims to address them by such assumed names through and by means of the post-office establishment of the United States. And it is charged that the conspirators, in further execution of their scheme, were to take and receive letters so addressed from and out of the United States post-office at Omaha and other places which were mentioned and that they were to write and send letters to one another by means of the post-office establishment which were to contain and set forth their fraudulent and deceitful schemes and were to be shown to the other victims for the purpose of inducing the latter to turn over to the conspirators large sums of money. The conspirators, it is charged, also used the post-office establishment to open correspondence with the victims and to procure them to open correspondence with two of the conspirators, whose names are given, in pursuance of the conspiracy.

It is alleged "that the said wicked and corrupt conspiracy, combination, confederation and agreement was originally formed and entered into by the said conspirators during the year 1905, the exact date whereof is to the grand jurors unknown, in the United States of America, the exact place and district whereof is to the grand jurors unknown, and until the twenty-third day of February, in the year nineteen hundred and nine, continuously and

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at all times during the four years next preceding the said twenty-third day of February," it, the conspiracy, "was continuously in existence and in the process of execution and operation and including all of said times, and the said conspirators did knowingly, falsely, wickedly and corruptly conspire, combine, confederate and agree together as aforesaid, and with said Ernest Fenby and said divers other persons to the grand jurors unknown, as aforesaid."

Overt acts are alleged, one of which is the renting by one of the conspirators under an assumed name of a post-office box at Omaha, Nebraska, and the receiving and sending of letters to the "victims," which set forth the scheme in detail by which the "millionaires" were to be imposed on and the ease of its accomplishment and assurance of success displayed. The indictment contains copies of the letters.

The second count of the indictment alleged the conspiracy to have been formed on the first of April, 1907, and the scheme of fraud and deception was set forth in a more general way. The use of the post-office establishment was alleged, as in the first count.

The original formation of the conspiracy was alleged, as in the first count, to have been in a place and district to the grand jurors unknown, but was continuously in existence and in process of execution for four years next preceding the twenty-third of February, 1909. The overt act alleged was the depositing of a letter by one of the conspirators in the post-office at Omaha, Nebraska, which letter concerned the scheme and artifice to defraud and to effect the object of the conspiracy.

It will be observed that it is charged that appellants and those named in the indictment as "conspirators," "on April 5," 1907 (first count), "did then and there," and "on April 1," 1907 (second count), "did then and there" conspire with Ernest Fenby and others, and that races and contests upon which money was to be bet were

to be organized "at Council Bluffs, in the State of Iowa," and that the conspirators "further then and there, and at Omaha, district aforesaid," were to execute their scheme. And it is charged that the conspiracy was to be effected in the manner described and that the conspirators, further to effect the object of the conspiracy, were "to rent a United States post office box for the delivery of mail, in the United States post office at Omaha, in the State of Nebraska, district aforesaid," and in other places.

The first overt act charged in pursuance of the conspiracy on the fifth of April, 1907, is the renting of such box. To effect the object of the conspiracy formed on April 1, 1907, the first overt act is alleged to have been done in July, 1907, at Omaha.

It is, however, also alleged that the conspiracy was originally formed and entered into during the year 1905 in the United States, the exact date and place being unknown, and was continuously in existence and in the process of execution and operation during the four years preceding the twenty-third of February, 1909.

The assignments of error present the contentions that the indictment is essentially deficient in the following particulars:

1. It does not allege that the conspiracy was formed in Nebraska, but, on the contrary, alleges that it was formed at some place unknown to the grand jury.

2. It does not allege in any of its counts that the first overt acts were done in Nebraska, but that they were done in a place and district unknown.

3. The indictment shows that the conspiracies were formed more than three years prior to the finding of the indictment.

4. It does not allege that appellants consciously participated in any overt act within three years next preceding the finding of the indictment.

The first two contentions involve the jurisdiction of the

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court under the Sixth Amendment of the Constitution of the United States requiring a crime to be tried in the State and district where it was committed. The third and fourth contentions raise the question of the statute of limitations.

First, as to what the indictment shows as to the formation of the conspiracy and the commission of overt acts. The appellants consider these propositions entirely upon the assumption that the only allegation that can be regarded is that which charges the formation of the conspiracy originally in 1905, and not the allegation of the formation of a conspiracy in 1907.

But nothing is specifically alleged as having been done to execute the conspiracy as originally formed. It is true, there is an allegation that the conspiracy was in existence and in the process of execution and operation, which is somewhat vague but is certainly not inconsistent with the fact that whatever was done, if anything, was done at Omaha.

It is charged that on April 5, 1907 (first count), and on April 1, 1907 (second count), the appellants and other persons "did then and there" conspire (we omit the adverbs). This might well be contended, so far as removal proceedings are concerned, as an allegation of the formation of the conspiracy in the district of Nebraska, or certainly a distinct and explicit renewal of it. And it would seem like giving technicality too much effect to consider that the agreement made in 1905, rather than its specific and formal renewal in 1907, should determine the jurisdiction of its trial. Besides, its continued existence and operation are alleged, and we have seen if overt acts were done prior to 1907 they may have been done at Omaha and constituted, with those done afterwards, a part of an entire scheme, to be executed by a succession of acts.

It is only by the assumption and insistence that the conspiracy was formed in 1905 that appellants give their

contentions any foundation whatever. If the conspiracy was formed at Omaha in 1907, upon the supposition that the conspiracy constitutes the offense and the State and district of its origin are the State and district of its trial, the District Court of Nebraska had jurisdiction. And again, upon the supposition that the first overt act completes the offense commenced by the conspiracy and by completing it determines the place of its trial, the District Court of Nebraska had jurisdiction. This follows, no matter where the overt act was done. We have pointed out, however, that the indictment does not show that the first overt act was done at a place and district unknown. The first overt act may have been performed at Omaha.

If either view, therefore, be accepted, the judgment of the Circuit Court dismissing the petitions for *habeas corpus* must be affirmed.

If, however, we assume with appellants that the indictment charges that the conspiracy was formed in 1905 and at a place unknown to the grand jurors, the same result must be pronounced, upon the authority of *Hyde v. The United States*, just decided, *ante*, p. 347. We there held that the place of trial could be any State and district where an overt act was performed. And we further held, following *United States v. Kissel*, 218 U. S. 601, that conspiracy might be a continuous crime. We there said, distinguishing a crime from its results: "But when the plot contemplates bringing to pass a continuing result that will not continue without the continuous coöperation of the conspirators to keep it up, and there is such continuous coöperation, it is a perversion of natural thought and of natural language to call such continuous coöperation a cinematographic series of distinct conspiracies, rather than to call it a single one." These remarks are especially pertinent to the case at bar. It is alleged in the indictment that the conspiracy set forth was designed to be and was continuous, and, being so, every overt act

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was the act of all the conspirators, made so by the terms and force of their unlawful plot.

In *Lonabaugh v. United States*, 179 Fed. Rep. 476, the Circuit Court of Appeals for the Eighth Circuit considered the relation of the overt acts to the conspiracy and their effect in determining the application of the statute of limitations. The court said (p. 478), by Mr. Justice Van Devanter, then Circuit Judge: "While the gravamen of the offense is the conspiracy, the terms of section 5440 are such that there also must be an overt act to make the offense complete (*Hyde v. Shine*, 199 U. S. 62, 76); and so the period of limitation must be computed from the date of the overt act rather than the formation of the conspiracy. And where during the existence of the conspiracy there are successive overt acts, the period of limitation must be computed from the date of the last of them of which there is appropriate allegation and proof, and this although some of the earlier acts may have occurred more than three years before the indictment was found. *Lorenz v. United States*, 24 App. D. C. 337, 387; S. C., 196 U. S. 640; *Ware v. United States*, 84 C. C. A. 503, 154 Fed. Rep. 577, 12 L. R. A. (N. S.) 1053; S. C., 207 U. S. 588; *Jones v. United States*, 89 C. C. A. 303, 162 Fed. Rep. 417; S. C., 212 U. S. 576."

If, however, the conspiracies may be regarded as distinct, then one is charged as having been formed at Omaha in April, 1907, and that overt acts were performed there to effect its object within three years of the finding of the indictment, to wit, October 7, 1909. These allegations establish the jurisdiction of the District Court of Nebraska and exclude the application of the statute of limitations.

As the place of the overt act may be the place of jurisdiction, it follows that the exact place where the conspiracy was formed need not be alleged. This case illustrates the evil which a contrary ruling would cause. The place where the conspiracy was formed was unknown

to the grand jurors (and might be so in many cases), but it was intended to be executed in a number of States of the Union, and yet, under the rigor of the contention of appellants, the conspirators could not be tried in any of them. In other words, not the place of the activities of the conspiracy and where it incurs guilt, but the place of its formation, which no one may know or can find out, is the place of the jurisdiction of its trial. And what compels this? It is answered: The Sixth Amendment of the Constitution of the United States. We have determined otherwise in *Hyde v. United States*, ante, p. 347.

The Constitution of the United States is not intended as a facility for crime. It is intended to prevent oppression, and its letter and its spirit are satisfied if where a criminal purpose is executed the criminal purpose be punished. It is there that its victims are sought and defrauded. It is there that its perpetrators should be brought to the bar of justice for their acts; not for the mere conception of them, but for the actual execution of them. The venue of his trial is thus made by the criminal himself, not determined by reasons or interests which may be adverse to him and used to his injury.

Orders dismissing petitions affirmed.

MR. JUSTICE HOLMES, dissenting.

These are appeals from orders denying writs of habeas corpus on the same state of facts, which can be set out in a few words. The petitioners were taken into custody in California for removal to Omaha, in the District of Nebraska, for trial before the District Court there, and severally petitioned for habeas corpus on the ground that the indictment showed that the Omaha court had no jurisdiction of the alleged offence. The indictment is under Rev. Stat. § 5440, amended by Act of May 17, 1879, c. 8, 21 Stat. 4, for conspiring to commit an offense

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against the United States, namely, to send and receive letters through the post-office in pursuance of a complex scheme to defraud various people, contrary to Rev. Stat. § 5480, amended by act of March 2, 1889, c. 393, 25 Stat. 873. The scheme contemplated the hiring of post-office boxes at Omaha and other places, in six different States; and the hiring of a box there and the posting and receiving of letters in that place by conspirators other than the petitioners are alleged as overt acts done in pursuance of the scheme. But it is alleged that the place where the conspiracy was formed is unknown, no place is laid for its continuance, and the petitioners are not shown to have been engaged in it in Omaha or ever to have been in the place. Therefore no jurisdiction is shown unless the averment of the above-mentioned overt acts makes up for all that is left out.

To deny the jurisdiction, however, I must go farther than was necessary in *Hyde v. United States*, just decided. For in this case the offense against the United States named as the proximate object of the conspiracy, viz. the sending of letters through the post-office in aid of the ultimately intended fraud, is alleged to have been accomplished, and indeed is laid as the overt act. But all the parties to the conspiracy could have been indicted in Omaha for the use of the post-office there in pursuance of their plan by some of their number, and it naturally may be asked how it can be possible that the petitioners should be collectively guilty of unlawfully using the mails in Omaha, but not guilty of being combined there for that purpose.

The answer has been suggested at least by what I have said in the case of *Hyde*. The parties are liable to punishment where the prohibited act is done, not on the ground of a fiction that they were present, but in spite of the fact that they were not present. And they well may be dealt with there if they can be reached, for bringing about what

is deemed a harm in that place. But when they are punished for being and not for doing, when the offence consists in no act beyond the osmose of mutual understanding, they should be punished only where they are, only where the wrongful relation exists. The United States can reach them equally, it is true, in either case, but as it can try them only where the crime has been committed, the test to be applied is the same that would be applied if the crime arose under the law of one of the States. It does not follow from the defendants' liability in Omaha for certain results of their conspiracy that they can be tried there for the conspiracy itself. I assume for purposes of decision, whatever misgivings may be felt as to the justice of indicting for a conspiracy to do what actually has been done, that an indictment will lie. *Reg. v. Button*, 11 Q. B. 929. *United States v. McDonald*, 3 Dillon, 543. *United States v. Rindskopf*, 6 Biss. 259. *United States v. De Grieff*, 16 Blatchf. 20. *R. v. Spragg*, 2 Burr. 993. But I am of opinion that Omaha is not the proper jurisdiction in which to bring it.

If the case were decided on the narrow ground that for the purposes of removal an allegation of conspiracy 'then and there' in the middle of the indictment was to be taken to refer to the caption and the place where the indictment was found, I should say nothing. But as general principles are thought to be involved, I think it proper to state my opinion about them.

MR. JUSTICE LURTON, MR. JUSTICE HUGHES and MR. JUSTICE LAMAR concur in these views.